TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 200

THE UNITED STATES OF AMERICA, APPELLANT, vs.
SISAL SALES CORPORATION, CHARLES D. ORTH,
ALVIN W. KRECH, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK

FILED AUGUST 21, 1925

(31415)

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1 In United States District Court for the Southern District of New York

UNITED STATES OF AMERICA, PETITIONER
v.
SISAL SALES CORPORATION, CHARLES D. ORTH, ALVIN W. Krech, Frederick T. Walker, Lynn H. Dinkins, F. W. Black, J. A. Beatson, Michael J. Smith, Charles D. Orth, jr., The Equitable Trust Company of New York, The Royal Bank of Canada, Interstate Trust and Banking Company, Hanson and Orth, Comision Exportadora de Yucatan, Tomas Castellanos Acevedo, Eric Corporation, defendants

In Equity,
No. —

Petition

To the Judges of the District Court of the United States for the Southern District of New York:

2 The United States of America, by its attorney for the Southern District of New York, acting under the direction of the Attorney General, brings this proceeding in equity against:

I

THE DEFENDANTS

Sisal Sales Corporation, a corporation organized under the laws of the State of Delaware, engaged in the importation of sisal into the United States and its sale and distribution among the several States. It has an office in the Southern District of New York, in the city of New York, at 27 Cedar Street.

Charles D. Orth, a resident of the said city of New York. He is the president and a director of the Sisal Sales Corporation, and also a copartner in the defendant firm of Hanson and Orth.

Alvin W. Krech, a resident of New York. He is president and a director of The Equitable Trust Company of New York, president of the Eric Corporation, and director of the Sisal Sales Corporation.

Frederick T. Walker, a resident of New York. He is a vice president and a director of the Sisal Sales Corporation and the Eric Corporation, and an agent of The Royal Bank of Canada, having a branch office in New York.

Lynn H. Dinkins, a resident of the city of New Orleans, La. He is a vice president and a director of the Sisal Sales Corporation, a vice president and a director of the Eric Corporation, and also a director of the Interstate Trust and Banking Company (of New Orleans).

3 F. W. Black, a resident of New York. He is a vice president and a director of the Sisal Sales Corporation, a vice president and director of the Eric Corporation and also a director of The Equitable Trust Company of New York.

J. A. Beatson, a resident of New York. He is a vice president and a director of the Sisal Sales Corporation, a vice president and a director of the Eric Corporation and an agent of The Royal Bank of Canada.

Michael J. Smith, a resident of New York. He is a vice president, and the treasurer of the Sisal Sales Corporation, and a copartner of the firm of Hanson and Orth.

Charles D. Orth, jr., a resident of New York, and a copartner of the firm of Hanson and Orth.

The Equitable Trust Company of New York, a corporation organized under the laws of the State of New York, doing a banking business in the city of New York.

The Royal Bank of Canada, a corporation organized under the laws of the Dominion of Canada, having a branch office and doing a banking business in the city of New York.

Interstate Trust and Banking Company, a corporation organized under the laws of the State of Louisiana, doing a banking business in the city of New Orleans, La.

4 Hanson and Orth, a partnership composed of Charles D. Orth, Michael J. Smith, and Charles D. Orth, jr., engaged in a fiber brokerage business with offices at 27 Cedar Street, New York, and acting as general managers of the defendants Sisal Sales Corporation and Eric Corporation.

Comision Exportadora de Yucatan, a body corporate created by the State of Yucatan, one of the States of Mexico, having its principal office in Merida, Yucatan, is authorized to conduct business and commercial transactions and to engage in the purchase, sale, and exportation of sisal; is engaged with the Sisal Sales Corporation in exporting sisal from Yucatan to the United States, and in commerce in sisal among the States of the United States, with an office at 27 Cedar Street, New York City.

Tomas Castellanos Acevedo, a resident of the State of Yucatan, Mexico, attorney in fact of the said Comision Exportadora de Yucatan, and its principal representative in its relations with the Sisal Sales Corporation and other American interests.

Eric Corporation, a corporation organized under the laws of the State of Delaware, with power to engage in the purchase and importation of sisal from Mexico into the United States, and the sale of sisal in the States of the United States, having an office in the Southern District of New York, in the City of New York, at 27 Cedar Street.

II

JURISDICTION

5 Defendants in the manner and by the means hereinafter alleged are engaged in a combination and conspiracy in restraint of interstate and foreign trade and commerce in sisal, and in contracts in restraint of such trade and commerce, and are monopolizing and attempting to monopolize such trade and com-

merce, in violation of the antitrust laws of the United States, particularly the "Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, and section 73 of the act commonly known as the Wilson Tariff Act of August 27, 1894, as amended by the act of February 12, 1913, and this suit is instituted to prevent and restrain the defendants from further violating the provisions of the aforesaid acts.

Large quantities of sisal are imported by the defendants into the Southern District of New York, within the jurisdiction of this court, as well as into other ports of the United States, in pursuance of said unlawful combination, conspiracy, contracts, monopoly and attempt to monopolize, and are being shipped by said defendants from and through the Southern District of New York to and through various States of the United States. This transportation of sisal normally constitutes a continuous course of interstate and foreign trade and commerce. Many acts in furtherance of said combination, conspiracy, and monopoly have been and are being in part carried out in the Southern District of New York, including the execution of the hereinafter described contracts of December 22, 1921, and June 19, 1923, and the defendants Orth, Orth, jr., Krech, Walker,
6 Black, Beatson, and Smith are residents thereof, and the defendants Sisal Sales Corporation, The Equitable Trust Company of New York, Hanson and Orth, and Eric Corporation have their principal offices therein.

III

DESCRIPTION OF SUBJECT MATTER

Sisal is a fiber obtained from the henequen plant and is used mainly in the manufacture of binder twine.

Mexico is the only country in which sisal is produced in sufficient quantities to supply the needs of the United States. Practically the entire output of that country is grown in the State of Yucatan, and, with the small quantity produced in the neighboring State of Campeche, is exported through the port of Progresso, Yucatan, to the United States. A small quantity is exported through the port of Campeche. For a period of twenty years or more, Mexican sisal has been able to fill the requirements of the binder twine manufacturers in the United States. Considerably more than 1,000,000 bales of the average weight of 375 pounds each were thus exported to the United States in the year ending June 30, 1916. Since that date the quantity of sisal exported to the United States has ranged from not less than 450,000 bales to 1,000,000 bales a year. The annual requirements of binder twine of the United States range from 250,000,000 to 300,000,000 pounds. There is no efficient substitute for binder twine in the operation of the grain harvesting ma-
7 chinery. Without binder twine the successful harvest of cereal crops on the present scale of production would be impossible.

More than 80 per cent of the binder twine used in the United States is made of sisal. The remainder is made principally of manila hemp (abaca) produced in the Philippine Islands, the demand for which, for the manufacture of rope, is so great that only a part of the output is available for use in the manufacture of twine. An insignificant portion is made of fibers imported from other tropical countries—Java, Hawaii, German East Africa, and New Zealand. No material, however, other than sisal can now be produced in sufficient quantities to meet the needs of the farmers of the United States. Sisal is, therefore, an article of prime necessity to American agriculture.

A number of manufacturers in the United States, including the penitentiaries of at least nine States, are engaged in the manufacture of binder twine. It is produced with a narrow margin of manufacturing profit. The increase in the cost of sisal is accordingly reflected immediately in the cost of binder twine. Every cent increase in the cost per pound of sisal increases the cost in the annual supply of twine for the farmers of the United States by more than $3,000,000.

IV

FIRST SUCCESSFUL MONOPOLIZATION OF TRADE AND COMMERCE IN SISAL IN THE UNITED STATES

(A) Contract of October 21, 1915

Prior to 1915 sisal was sold to manufacturers of binder twine in
the United States under conditions of competition. The
8 planters producing sisal in Mexico sold to the various indi-
viduals and concerns engaged in the purchase of sisal in competition with each other. These purchasers in turn sold to the various manufacturers of binder twine in the United States, or to brokers in the United States, who, in competition with each other, in turn sold and shipped to the manufacturers.

In the summer or autumn of 1915, the defendant, Lynn H. Dinkins, associated with one Sol Wexler, entered into negotiations which were carried on at the city of New Orleans, La., and which resulted in October, 1915, in an agreement to the effect that the Comision Reguladora del Mercado de Henequen, an institution created under the laws of the State of Yucatan, Mexico, should purchase the entire sisal output of Mexico, import it into the United States, and withhold it from the market as long as necessary to enable it to be sold at the increased prices and upon the conditions to be fixed by the parties to such agreement.

The part to be performed by Sol Wexler and Lynn H. Dinkins in making the combination effective was set out in a contract in writing entered into between them and the Comision Reguladora del Mercado de Henequen at the city of New Orleans, and dated October 21, 1915. In this contract it was recited that the Comision

Reguladora del Mercado de Henequen desired to establish a continuous credit of $10,000,000 "in the United States for a period of five years, in order to enable it to purchase and thereafter import 9 into the United States sisal grass or henequen, and for other lawful purposes of its business," and that Sol Wexler and Lynn H. Dinkins were willing to undertake to procure and extend the credit so desired "for the purposes aforesaid;" it was covenanted that on the faith of the contract the Comision Reguladora del Mercado de Henequen "will and intends to enter into large contracts for the purchase in Yucatan of henequen or sisal grass and will thereby incur large liabilities which can only be met by obtaining" the credit mentioned in the contract; and it was provided that within twenty days Sol Wexler and Lynn H. Dinkins would cause a corporation to be organized in the United States, which should adopt and carry into effect the various provisions of the contract according to its tenor and purpose.

The corporation provided for was not organized within the twenty days fixed in the contract but was organized shortly thereafter and was known as the Pan-American Commission Corporation. Negotiations were continued and (upon the Comision Reguladora del Mercado de Henequen being reorganized on November 11, 1915) a further contract in writing, dated November 13, 1915, was entered into between Sol Wexler and Lynn H. Dinkins, and the Comision Reguladora del Mercado de Henequen, acting through its then duly authorized representative, Victor A. Rendon, embodying and carrying forward, with slight modifications, the terms and conditions of the contract above described. This contract, hereinafter referred to as the contract of November 13, 1915, was reduced to final form and executed at the city of New York.

10 (B) Contracts with producers for purchase of entire output of sisal

Subsequent to the formation of the before-mentioned combination and prior to the date of the formal contract of November 13, 1915, a decree was obtained from and promulgated by the military governor of Yucatan by which the Comision Reguladora del Mercado de Henequen was reorganized.

By this decree the Comision Reguladora del Mercado de Henequen was specifically authorized to enter into "contracts of commercial association" with the producers of sisal within and without the State of Yucatan, whereby they would become associate members of and would be obliged to deliver to the Comision Reguladora del Mercado de Henequen, to be disposed of by it, all sisal produced by them during the period fixed in the contracts. Provision was also made for the pro rata distribution among the associate members of the ownership (1) of the then existing capital of the Comision Reguladora del Mercado de Henequen, which had been derived from the special taxes on unmanufactured sisal theretofore received and collected by it, and (2) of the surplus thereafter to accrue from its operations.

The management of the business of the Comision Reguladora del Mercado de Henequen was "entrusted only to the general manager," who was invested with general and specific power to adminis-
11 ter its property and affairs. And the law providing for the creation of the Comision Reguladora del Mercado de Henequen, and the decree made in pursuance thereof, were amended in various respects, and all conflicting laws, decrees, and regulations were abolished.

Thereupon provision having been made by the contract of November 13, 1915, for the credit and assistance necessary to carry out the purposes of such combination as above mentioned, the Comision Reguladora del Mercado de Henequen, in pursuance of the power conferred upon it by the last-mentioned decree, entered into contracts in writing with all or practically all of the producers of sisal in Mexico. By these contracts, the producers of sisal were firmly bound for a period of five years to deliver to the Comision Reguladora del Mercado de Henequen all the sisal produced by them, to be disposed of by it; the Comision Reguladora del Mercado de Henequen was to pay to each producer on the delivery of the sisal so delivered a price fixed and subject to change by the Comision Reguladora del Mercado de Henequen, the price to go into immediate effect upon the execution of the contracts to be $1.00 American gold, or its equivalent in national currency, for each 11½ kilos of sisal delivered in Progresso, or about 4 cents a pound; and at the end of each year the books of the Comision Reguladora del Mercado de Henequen were to be closed and the net proceeds distributed to the producers in proportion to the amount of sisal delivered by them in the course of the year.

12 (C) Organization of Pan-American Commission Corporation

The Pan-American Commission Corporation was incorporated under the laws of New York, on or about the 8th day of December, 1915, with an authorized capital stock of $2,000,000 divided into shares of $100 each, of which $1,000,000 was preferred and $1,000,000 common stock. Broad powers were conferred upon this corporation, among others the powers to act as agent or representative of corporations, firms, and individuals; to do a general business as commission merchant, broker, selling agent, and to carry on business as manufacturers, producers, merchants, importers, and exporters generally, but especially of sisal, henequen, hemp, and fiber of every class and kind; to obtain or procure credit for any person or corporation with whom said corporation shall do business.

Upon its organization the Pan-American Commission Corporation accepted and became a party to the contract of November 13, 1915, and in consideration thereof issued its common stock in the sum of $1,000,000 to said Sol Wexler and Lynn H. Dinkins, or to their order. Its preferred stock in the sum of $1,000,000 was sold at par for cash, which was turned into its treasury. One-half of the common stock was given as a bonus to the purchasers of the preferred stock in pro-

portion to the amounts purchased by each. The remaining one-half of the common stock was retained by Sol Wexler and Lynn H.
13 Dinkins, who became directors, and president and vice president, respectively, of the Pan-American Commission Corporation.

In accordance with the contract of November 13, 1915, as modified February 16, 1916, the Pan-American Commission Corporation received a minimum annual compensation of $450,000 (in addition to current rates of interest, not less than 4 per cent or more than six per cent. on loans it made on sisal) for supplying the assistance deemed necessary to make the combination effective, and the monopoly of sisal complete.

(D) Effect of monopoly

As a result of the above combination and the above-described acts done in furtherance thereof, the parties to the said combination obtained a complete monopoly of trade and commerce in sisal among the States of the United States and between the United States and Mexico. The Comision Reguladora del Mercado de Henequen became the sole purchaser of sisal from the producers in Mexico, and sole importer of sisal into the United States, and the sole seller of sisal in the United States. The parties to the above agreement were able to fix arbitrarily the price of sisal in the United States. The price, which at the time of the formation of such combination was 5½ cents per pound at New York, was rapidly advanced. By May 22, 1916, the price had reached 7⅝ cents per pound at New York, notwithstanding the quantity of sisal imported into
14 the United States for the year ending June 30, 1916, was greatly in excess of the importation in any previous year; by July 11, 1916, the price had been further increased to 10⅜ cents per pound; by December 23, 1916, to 14½ cents per pound; and by January 25, 1917, to 16½ cents per pound.

In 1917 the Mexican interests, no longer requiring the services of the Pan-American Commission Corporation to borrow money, repudiated the contract of November 13, 1915, as modified. A suit brought against that company, the Comision Reguladora and others, under the antitrust laws, was dismissed without prejudice for want of actuality.

V

EFFORTS ON THE PART OF CERTAIN DEFENDANTS TO RESTRAIN AND MONOPOLIZE TRADE AND COMMERCE IN SISAL BETWEEN 1917 AND 1921

(A) Efforts of the Comision Reguladora to maintain exorbitant war-time prices

Until about August, 1919, the Comision Reguladora del Mercado de Henequen was practically the only distributor of Mexican sisal. It maintained offices both in Yucatan and the city of New York. There being little money obtainable in Yucatan, the Comision Reg-

uladora del Mercado de Henequen was obliged to borrow large sums from banks in the United States. Most of this money was furnished by The Equitable Trust Company of New York and The Royal Bank of Canada, which maintains a branch in the same
15 place. Some money was also furnished by the Interstate Trust and Banking Company, of New Orleans, La., and other banks in the United States. The said banks advanced to the Comision Reguladora del Mercado de Henequen from 4 cents to 6 cents per pound on all sisal purchased for shipment to the United States. During the years 1917 and 1918, when the price of sisal reached as high as 19 cents per pound, the Comision Reguladora del Mercado de Henequen was paying the producer in Yucatan from 4 cents to 7 cents per pound, and such payments to some extent were made in scrip now practically worthless.

In order to maintain such exorbitant prices it was necessary for the Comision Reguladora del Mercado de Henequen to purchase all available Mexican sisal. In maintaining this monopolistic control, it accumulated a surplus in the United States of about 400,000 bales of sisal pledged to the said banks, who held warehouse receipts issued by warehouses in various parts of the United States where the said sisal was stored.

In the latter part of 1919 the price of sisal declined. The price had gone so high that manufacturers were substituting other fibers for sisal. During the war Manila hemp was used considerably for war purposes, especially in the manufacture of rope for naval vessels. Owing to the enormous demand for fiber during the war, the production of hemp in the Philippine Islands, and other hemp producing countries, had been greatly stimulated as it had also
16 been stimulated in Yucatan. After the armistice the supply of Manila hemp for purposes other than war purposes gradually increased. As a result a large surplus of sisal and other fiber had accumulated.

The Comision Reguladora del Mercado de Henequen has dissipated much of its large profits, and many of the persons connected with it removed to foreign countries. There being a large quantity of surplus sisal stored in the United States, the manufacturers in the United States refused to purchase except in small quantities. The interested banks, realizing that a period of readjustment was at hand, refused further advances. Thus, there being no further outlet for Mexican sisal under the old arrangement, the Yucatan State Government declared a free and open market.

(B) Organization of defendant Eric Corporation to control the American market

The Comision Reguladora del Mercado de Henequen collapsed about August, 1919, and the interested banks foreclosed on the sisal stored in the United States which was held as collateral to secure loans amounting to several million dollars. The said banks then had on hand about 400,000 bales of sisal which they desired to dispose of in order to recover their loans. They finally organized the defendant Eric Corporation as a selling agency.

This corporation was organized and is existing under the laws of the State of Delaware. The name Eric was obtained by taking the first letter of the name of each of four banks in the United States:

17 "E" (Equitable Trust Company of New York).

"R" (Royal Bank of Canada).

"I" (Interstate Trust and Banking Company, of New Orleans, La.).

"C" (Continental and Commercial National Bank, of Chicago, Ill.).

It was incorporated October 22, 1919, with a capital stock of $100,000, represented by 1,000 shares of $100 each. On the same day that incorporation papers were issued, a meeting was held and 900 shares of the said 1,000 shares were issued to the following directors: Lynn H. Dinkins, of the Interstate Trust and Banking Company; Alvin W. Krech, president, The Equitable Trust Company of New York; and Frederick T. Walker, vice president, The Royal Bank of Canada.

The charter of the Eric Corporation did not limit itself to the simple marketing of the sisal reduced to possession by said banks. In fact, the Eric Corporation was the dominant factor in Mexican sisal from the beginning of its organization, dealing with various officials of the Mexican Government and the State of Yucatan, arranging through its interested banks in the United States to make other advances for the purpose of regulating the price of sisal, and continuously engaged in such activity until about December 22, 1921, when it arranged to dispose of its sisal to the Comision Reguladora del Mercado de Henequen (now the Comision Exportadora de Yucatan), and on or about the same date arranged to sell its
18 other assets to the Sisal Sales Corporation, both organizations being hereinafter more particularly described.

At a meeting held on the 24th of March, 1920, the capital stock of the Eric Corporation was increased from $100,000 to $6,450,000, divided as follows: 62,500 shares of preferred stock, par value $100 per share; and 2,000 shares common stock, par value $100 per share.

On the same date the common stockholders of record were as follows: Lynn H. Dinkins (Interstate Trust and Banking Company), 270 shares; S. T. Murdock (now deceased), 50 shares; John R. Longmeyer (connection unknown), 47 shares; Henry Cooper (The Equitable Trust Company of New York), 316 shares; F. T. Walker and J. A. Beatson (The Royal Bank of Canada), 317 shares.

In addition to the large stocks of sisal taken over by the Eric Corporation from the said interested banks in the United States, there was a surplus of sisal in Yucatan owned by the Comision Reguladora del Mercado de Henequen amounting to approximately 250,000 bales. In order to protect the sisal stored in the United

States from the price decline, it was considered necessary to control the sisal still owned by the Comision Reguladora del Mercado de Henequen. The same was therefore purchased by the Eric Corporation from the Comision Reguladora del Mercado de Henequen, giving preferred stock of the Eric Corporation in payment. This was
accomplished by a contract between the Eric Corporation and
19 the Comision Reguladora del Mercado de Henequen, dated
January 23, 1920. The said contract was carried into effect and other preferred stock was issued to the Comision Reguladora del Mercado de Henequen from time to time in order to purchase additional quantities of sisal, and all of such certificates were deposited with the banks by way of further security. A copy of said contract is annexed hereto, marked "Exhibit A," and prayed to be considered a part hereof.

(C) Organization of the Comision Monetaria to control the Mexican market

In January, 1921, the Comision Reguladora del Mercado de Henequen was practically moribund. The Eric Corporation was having serious difficulty in disposing of the sisal stored in the United States. Owing to the open market prevailing in Yucatan after the financial collapse of the Comision Reguladora del Mercado de Henequen the independent buyers in Yucatan were able to purchase fresh sisal at a price about as low as Eric Corporation could afford to sell the sisal stored in the United States. Furthermore, fresh sisal was more in demand, as the stored sisal owned by the Eric Corporation was unfavorably regarded because of rumored deterioration.

In January, 1921, the Equitable Trust Company had a financial agent, John B. Glenn, stationed in the City of Mexico. Negotiations were carried on between the said Glenn and the finance minister of the Mexican Government, de la Huerta. The Eric
20 Corporation was kept advised regarding the progress of these
negotiations. About this time the defendant, Lynn H. Dinkins, vice president and acting manager of the affairs of the Eric Corporation, went to the City of Mexico at the request of said John B. Glenn for the purpose of making a satisfactory agreement with the Mexican Government with respect to sisal. Dinkins reported that the only way to regulate the price of sisal so that the Eric Corporation could dispose of its surplus stock and otherwise profit was to prevail upon the Mexican Government to impose a Federal tax and thus insure an artificial elevation of the price of sisal.

The Comision Monetaria was organized in the early part of 1921 for the purpose of entering the sisal market in Yucatan and purchasing sisal in sufficient quantities at an arbitrary price in order to raise the price of sisal. In order to make effective the purpose for which it was organized, financial assistance was obtained from the Eric Corporation and its affiliated banks.

Although the agreements had been tentatively made during the visit of said Lynn H. Dinkins to Mexico City in the early months of 1921, a formal contract was signed on April 20, 1921. A copy of said contract is annexed hereto marked "Exhibit B" and prayed to be considered a part hereof.

The Eric Corporation agreed to advance the Comision Monetaria such sums of money as were necessary to purchase sisal, holding such sisal as collateral security. The contract also contemplated that the Mexican Government would so arrange all Federal 21 export taxes that the Comision Monetaria and the Eric Corporation would be exempt. The Comision Monetaria proposed to purchase sisal at a fixed price of 5½ cents per pound, although the Eric Corporation suggested a price of 6 cents per pound.

On or about April 23, 1921, the Comision Monetaria began to purchase sisal at 5½ cents per pound, which represented an increase of 1½ cents per pound over the price which had prevailed for several months previous.

The Mexican Government had, on March 19, 1921, proclaimed a decree increasing the export tax from 2 cents Mexican (1 cent U. S. gold) to 6 cents Mexican (3 cents U. S. gold) per kilo (i. e., 2.2 pounds). The sisal purchased by the Comision Monetaria was shipped in the name and for the account of the Eric Corporation. Upon the entry of the Comision Monetaria into the sisal market in Yucatan, all independent purchasers suspended operations because of the closed market thus brought about by the imposition of the said Federal tax on them, which tax was discriminatory in favor of the Comision Monetaria and the Eric Corporation.

(D) Collapse of the Comision Montetaria in July, 1921

Notwithstanding the discriminatory Federal export tax in favor of the Comision Monetaria and the Eric Corporation, the sisal market continued weak because the large quantity of sisal owned by the Eric Corporation and stored in the United States had not been 22 disposed of. Finally the interested banks in the United States, through the Eric Corporation, refused to make further advances of money to the Comision Monetaria. Consequently, the Comision Monetaria ceased purchasing sisal and was eliminated as a factor in the sisal market on July 11, 1921. On August 23, 1921, the said additional Federal export tax of 4 cents Mexican (2 cents U. S. gold) per kilo was repealed, over the protest of the Eric Corporation. Again there existed an open market in Yucatan, which continued until the establishment of the present monopoly as hereinafter described.

The total amount of sisal produced by the Comision Monetaria through the financial assistance of the Eric Corporation was about 180,000 bales. Of this amount about 80,000 bales were sold, leaving an additional 100,000 bales to be added to the stock of sisal already owned by the Eric Corporation.

VI

THE EXISTING RESTRAINT AND MONOPOLIZATION

(A) Preliminary negotiations

On or about May 1, 1921, the defendants (except the Comision Exportadora de Yucatan and the Sisal Sales Corporation) being alarmed by threatened conditions of competition in the sisal trade, and seeking to secure the control of the business which it had been the purpose of the Eric Corporation and the Comision Monetaria to exercise, which control it had become apparent could not be made completely effective by the combination between the Eric Cor-
23 poration and the Comision Monetaria, combined, conspired, and confederated together to restrain and monopolize the interstate and foreign trade and commerce of the United States in sisal, and to prevent and restrain competition in the purchase and sale of sisal, and to maintain the price of that commodity at much higher levels than would obtain under conditions of free and open competition.

In pursuance of their unlawful purpose, the defendants, Charles D. Orth, Alvin W. Krech, Lynn H. Dinkins, F. W. Black, J. A. Beatson, Frederick T. Walker, Michael J. Smith, Tomas Castellanos Acevedo, and others, held a series of conferences in New York City, and elsewhere in the United States, at which it was agreed that the defendants, Thomas Castellanos Acevedo (now attorney in fact for the said defendant, Comision Exportadora de Yucatan, formerly Comision Reguladora del Mercado de Henequen) should proceed to Yucatan, Mexico, and arrange with the persons in control of the Yucatan State Government, and others, for the formation of an organization under the control of the Yucatan State Government, to engage in the purchase, sale, and export of sisal produced in Yucatan, and to cause to be enacted in the Republic of Mexico, or in the States of Yucatan and Campeche, any laws or regulations necessary to create a monopoly of the sisal produced in said States, and such laws and regulations as might be necessary for a reduction of acreage and control of prices.

24 It was further agreed that in the event of satisfactory arrangements upon the part of the said Castellanos with the said Mexican authorities, the defendant, the Eric Corporation, would arrange to sell all of its holdings of stored sisal to such Yucatan corporation or selling agency as might be created, and that the Eric Corporation, or some other corporation to be formed by or through it, would arrange to make all necessary loans or advances of money, to the end that the proposed organization, corporation, or selling agency in the State of Yucatan might effectively function, and that a monopoly in sisal might be established and the price thereof artificially increased to about 7 cents per pound.

That said Castellanos would arrange to have the proposed Yucatan organization purchase from the Eric Corporation all of its stored sisal at a fixed arbitrary price of about 7 cents per pound, upon terms to be later agreed upon, and further to arrange to have the proposed organization in Yucatan enter into a contract with a selling agency which would thereafter be established by said defendants in the United States, under such terms as might be subsequently agreed upon, which would give the proposed selling agency in the United States the exclusive sale of all sisal purchased by the proposed Yucatan organization.

All of the terms of the above combination, conspiracy, or agreement were substantially agreed to, and the necessary arrangements made, as hereinafter more fully set forth.

25 (B) Organization of new Comision Reguladora del Mercado de Hennequen

On or about July 16, 1921, the State of Yucatan enacted a law putting the old Comision Reguladora del Mercado de Henequen into liquidation and establishing a new Comision Reguladora del Mercado de Henequen. This law also provided a moratorium of ten years as to the old Comision Reguladora del Mercado de Henequen, the obligations of which could be paid the creditors in instalments of 10 per cent a year. The organization of the new Comision Reguladora del Mercado de Henequen and the law enacted by the State of Yucatan affecting its operations were brought about largely through the activities of Tomas Castellanos Acevedo and his associates in carrying out his unlawful agreement with the other defendants in the United States, heretofore referred to.

After the repeal of the extra Federal export tax on August 23, 1921, and the subsequent opening of the market in Yucatan, independent buyers began purchasing sisal at from 3 cents to 3¾ cents per pound. From this time to the end of the year the price of sisal gradually declined, as a result of the Eric Corporation quoting its stored sisal in the United States at exceedingly low prices.

During the month of November, 1921, the Eric Corporation made quotations to the trade as low as 2¾ cents per pound. These quotations were not in good faith, however, but were made to im-
26 press the officials of the Yucatan State Government and the sisal producers in Yucatan with the fact that the Eric Corporation had on hand such large stores of sisal and was backed by such powerful financial interests that it was capable of selling its sisal at figures calculated to ruin the farmers and others engaged in the sisal industry, and thus compel the officials of the Yucatan State Government to enter into such an arrangement as the Eric Corporation and its affiliated banks might desire to impose.

While the above price quotations by the Eric Corporation did disturb the market in Yucatan, and thus have the desired effect upon the Yucatan officials and producers, it did not cause any substantial losses to the Eric Corporation, as it only filled orders to the amount of a few thousand bales. That is to say, when twine manufacturers submitted orders for full requirements of sisal at 2¾ cents per pound, the Eric Corporation refused to fill their orders, except for a very limited quantity of sisal.

(C) Contact for the services of Hanson and Orth

The defendant, Hanson and Orth, is an important fiber brokerage concern, with its principal offices at 27 Cedar Street, New York, N. Y., occupying the same offices as the Sisal Sales Corporation and the Eric Corporation. On September 12, 1921, the Eric Corporation entered into a formal contract with the firm of Hanson and Orth, whereby said firm became the general managers of the business of the Eric Corporation in disposing of its sisal and was to
27 receive for such service an annual salary of $50,000 and a commission of 1 per cent on the gross sales of sisal.

A copy of the above contract is annexed hereto, marked "Exhibit C," and prayed to be considered a part hereof.

This agreement secured the services of the defendant, Charles D. Orth, a member of said firm, who is one of the persons who devised and created the present scheme for the sisal monopoly in Yucatan, as hereinabove alleged.

After the organization of the Sisal Sales Corporation the firm of Hanson and Orth occupied the same relationship with such corporation under a verbal agreement, and the said Charles D. Orth also became president of the Sisal Sales Corporation. About June, 1923, upon the execution of a supplemental contract between the Comision Exportadora de Yucatan and the Sisal Sales Corporation whereby the commission of the Sisal Sales Corporation on the gross sales of sisal was reduced from six per cent to three per cent, the salary of $50,000 per year received by Hanson and Orth from the Sisal Sales Corporation was discontinued, but the said firm continued to receive from such corporation a commission of one per cent on the gross sales of all sisal sold by the Sisal Sales Corporation.

On April 1, 1924, a formal contract was executed between the Sisal Sales Corporation and the firm of Hanson and Orth whereby the firm of Hanson and Orth continues to act as general manager
28 of such corporation, receiving a commission of 1 per cent on all sisal sold by the Sisal Sales Corporation.

A copy of the above contract is annexed hereto, marked "Exhibit D," and prayed to be considered a part hereof.

(D) Organization of the Sisal Sales Corporation

There were several reasons which made it expedient for the Eric Corporation to retire from business, provided it could transfer its assets to some new corporation of a similar character. Therefore practically the same persons and interests organized a new selling agency, known as the Sisal Sales Corporation, under the laws of the State of Delaware.

A certificate of incorporation was issued November 5, 1921. The first meeting was held on the 9th day of November, 1921, at which the following directors were elected:

Alvin W. Krech, F. W. Black (of The Equitable Trust Company of New York); Frederick T. Walker, J. A. Beatson (of The Royal Bank of Canada); and Lynn H. Dinkins (of the Interstate Trust and Banking Company, of New Orleans).

Thereafter certain meetings were held in which the by-laws were amended providing for more directors, and a meeting was held December 14, 1921. The original incorporators above mentioned submitted an offer in writing to purchase the entire capital stock of 150 shares for the amount of $1,500 cash. This offer was formally accepted and shares were issued as follows:

29 Henry H. Tappen (The Equitable Trust Company of New York), 50 shares.

Frederick T. Walker and J. A. Beatson (The Royal Bank of Canada), 50 shares.

Lynn H. Dinkins (Interstate Trust and Banking Company), 50 shares.

(E) Discriminatory tax of December 14, 1921, and restriction of production through influence of the defendant Castellanos

The new Comision Reguladora del Mercado de Henequen was without money, and was therefore unable to enter the sisal market and would not have been able to do so except for the financial assistance it received from and through the Eric Corporation and the Sisal Sales Corporation, as a result of negotiations carried on in the United States during the year 1921, as hereinbefore alleged. As a result of the agreements arrived at at such negotiations, and in view of arrangements made for money necessary to engage in the sisal business to be furnished by the said financial interests in the United States, the State of Yucatan enacted a law on December 13, 1921, which became effective on December 14, 1921, imposing a production tax of 8 centavos (4 cents U. S. gold) per kilo.

This tax with a Mexican Federal surtax of 50 per cent, charged on all State taxes, made the total tax 12 cents Mexican (6 cents U. S. gold) per kilo. This tax was to be collected by the Yucatan State Treasurer, and paid to the new Comision Reguladora del Mercado de Henequen to be used by the latter in the regulation of the
30 sisal market. The result was an artificial increase in the price of both fresh sisal and the stored sisal of the Eric Corporation in the United States. An English translation of this law is annexed hereto, marked "Exhibit E," and prayed to be considered a part hereof. Furthermore, as a part of its policy to regulate the sisal market, and as a result of the unlawful combination, conspiracy, and

agreements entered into in the United States among the defendants in this action, the State of Yucatan enacted a law on December 14, 1921, which became effective December 15, 1921, restricting the production of sisal from 15 to 50 per cent less than the quantity then being produced. The law provided that it should cease to be effective as soon as the stocks of sisal stored in the United States (at that time held by the Eric Corporation) were disposed of. The purpose of this act was to curtail production so that the stored sisal of the Eric Corporation in the United States might gradually be liquidated at a price in excess of what the normal and unrestrained competitive conditions at that time would have justified, and such legislation was in return for the financial assistance to be rendered by the Sisal Sales Corporation and its affiliated financial interests, and the contemplated purchase by the Comision Exportadora de Yucatan of the stocks of stored sisal held by the Eric Corporation, and in pursuance of agreements made. An English translation of this law is annexed hereto, marked "Exhibit F," and prayed to be considered a part hereof.

31 Notwithstanding the special taxes designated to close the open market in favor of the new Comision Reguladora del Mercado de Henequen, the independent buyers continued to purchase sisal in Yucatan, because the manufacturers preferred to pay a reasonable premium for fresh sisal rather than be forced to buy the stored sisal held by the Eric Corporation. The Comision Reguladora del Mercado de Henequen was not at this time buying sisal because its formal contract with the Sisal Sales Corporation had not yet been finally executed, although tentative agreements had been made.

(F) Contract of December 22, 1921

Further in pursuance of the negotiations carried on in the United States and in Mexico from time to time during the year 1921, and the tentative agreements and arrangements made during the same period, a formal contract in writing was entered into at the city of New York between the Sisal Sales Corporation and the Comision Reguladora del Mercado de Henequen on December 22, 1921. The contract is signed on behalf of the Sisal Sales Corporation by the defendant, Charles D. Orth, president of the Sisal Sales Corporation, and on behalf of the Comision Reguladora del Mercado de Henequen by the defendant, Tomas Castellanos Acevedo, attorney in fact for the Comision Reguladora del Mercado de Henequen. Among its provisions are the following:

(1) The Comision Reguladora del Mercado de Henequen appoints the Sisal Sales Corporation its general agent;

32 (2) The Sisal Sales Corporation shall act as exclusive selling agent in all of the markets of the world for the Comision Reguladora del Mercado de Henequen in connection with all sisal now owned or controlled by, or which may hereafter, during the

life of the contract, be owned or controlled by the Comision Reguladora del Mercado de Henequen;

(3) The Comision Reguladora del Mercado de Henequen may draw on the Sisal Sales Corporation at sight to pay for such purchases of sisal as the Comision Reguladora del Mercado de Henequen may make in Yucatan from time to time to cover actual sales which may be made by the Sisal Sales Corporation for the account of the Comision Reguladora del Mercado de Henequen;

(4) The Sisal Sales Corporation shall make all arrangements for the transportation of the sisal which it may sell for the account of the Comision Reguladora del Mercado de Henequen and shall endeavor to effect insurance upon the sisal from the time that the Sisal Sales Corporation is notified in New York by the Comision Reguladora del Mercado de Henequen that such sisal is under the control or at the risk of the Comision Reguladora del Mercado de Henequen;

(5) The Sisal Sales Corporation shall maintain not less than two representatives at Merida, Yucatan, one or more of whom shall be authorized to countersign for the purpose of authentication drafts drawn by the Comision Reguladora del Mercado de Henequen
33 on the Sisal Sales Corporation, and no draft shall be sold, negotiated, or forwarded for collection unless it has been countersigned as aforesaid by the duly authorized representative of the Sisal Sales Corporation;

(6) As compensation for its services specified in the contract, the Sisal Sales Corporation shall receive from the Comision Reguladora del Mercado de Henequen a commission of six per cent on the gross amount of all sales made by the Sisal Sales Corporation for the account of the Comision Reguladora del Mercado de Henequen;

(7) The contract shall be in effect for the term of five years from the date of its final ratification by both parties.

A copy of the above contract is annexed hereto, marked "Exhibit G," and prayed to be considered a part hereof.

(G) Sales by the Eric Corporation to Comision Exportadora de Yucatan and Sisal Sales Corporation

The new Comision Reguladora del Mercado de Henequen, by a letter dated December 22, 1921 (the same day that the formal contract was executed between the new Comision Reguladora del Mercado de Henequen and the Sisal Sales Corporation), signed by its agent and attorney in fact, Thomas Castellanos Acevedo, offered to purchase the entire stock of sisal owned by the Eric Corporation at a price equal to all outstanding obligations and liabilities of the Eric Corporation secured by such sisal. By a
34 letter of the same date, signed by the defendants, Frederick T. Walker and F. W. Black, as vice presidents of the Eric Corporation, the offer was accepted. The sale of such sisal was consummated on February 21, 1922, at a fixed price of 7 cents per pound.

On the same date, February 21, 1922, the Eric Corporation sold all of its other assets to the Sisal Sales Corporation to the amount of $610,555.22 in consideration of a note for the amount of $811,385.70, bearing 6½ per cent interest payable to the Equitable Trust Company of New York. Later these notes were substituted by consent of the pledgees for the notes of the Eric Corporation.

Both said transactions—i. e., the sale by the Eric Corporation of its sisal holdings to the Comision Exportadora de Yucatan (formerly the new Comision Reguladora del Mercado de Henequen) and the sale of its other assets to the Sisal Sales Corporation—were one and the same transaction, and no cash payments were involved. In both instances the purchasers gave promissory notes as full consideration, payable to the order of the Equitable Trust Company of New York. The only delay at this period was the obtaining of the formal consent of all of the pledgees—i. e., the interested banks—to the substitution of said new promissory notes for those of the Eric Corporation, and this was finally accomplished.

Pending receipt of this formal consent, all agreements and evidences of obligation were placed in escrow with the Corporation Trust Company of Delaware, which acted as trustee in the matter.

35 (H) Name of the New Comision Reguladora del Mercado de Henequen changed to Comision Exportadora de Yucatan

For various reasons, and particularly because of the fact that the old Comision Reguladora del Mercado de Henequen had previously been a defendant in a suit filed by the United States Government (in which suit the defendant, Lynn H. Dinkins, also was a defendant), the bankers and their associates in the United States, interested in the establishment of a sisal monopoly, considered it expedient to bring about a change in the name of the Comision Reguladora. They, therefore, registered their objections with the officials of said Comision, and, as a result, the State of Yucatan, by a decree on January 2, 1922, changed the name of the new Comision Reguladora del Mercado de Henequen to Comision Exportadora de Yucatan.

On the same day the State of Yucatan enacted a law exempting all sisal sold to the Comision Exportadora de Yucatan from the payment of a special state tax imposed by the law of December 13, 1921.

On the same day the Comision Exportadora de Yucatan began buying sisal from the Yucatan planters at 4 cents per pound, drawing on the Sisal Sales Corporation.

The Mexican Federal Government had by a decree which
36 became effective on January 1, 1922, reduced the Federal surtax on all state taxes from 50 per cent to 25 per cent. This made the discriminatory tax in favor of the Comision Exportadora de Yucatan amount to 8 cents Mexican plus 2 cents Mexican per

kilo, or a total of 10 cents Mexican per kilo, which is equal to about 2¼ cents U. S. gold per pound.

On or about January 6, 1922, in pursuance of the unlawful agreements made in the United States as hereinbefore set forth, an agreement was made between the Comision Exportadora de Yucatan and the Comision Reguladora del Mercado de Henequen of Campeche whereby the sales of sisal of the Campeche institution are consolidated with those of the Comision Exportadora de Yucatan, the latter institution drawing on the Sisal Sales Corporation for the money it advances to the Campeche institution with which it purchases sisal from the Campeche farmers, and such sisal is imported into the United States and sold therein by the Sisal Sales Corporation exclusively.

(I) Additional discriminatory tax imposed by the Yucatan State Government on March 7, 1922

Even after the Comision Exportadora de Yucatan began purchasing sisal on January 2, 1922, independent buyers continued to purchase, paying the 2¼ cents U. S. gold per pound discriminatory tax. In order to completely insure against the further purchase of sisal in Yucatan by independent buyers, the State Government of Yucatan, on March 7, 1922, in pursuance of agreements made
37 in the United States between Tomas Castellanos Acevedo and his associates and officials of the Sisal Sales Corporation, and as a result of the efforts on the part of the said Castellanos and his associates, imposed an additional special tax of 4 cents Mexican per kilo, which with the Mexican Federal surtax of 25 per cent would amount to 5 cents Mexican per kilo (or about 1⅛ cents U. S. gold per pound), all sisal held by or delivered to the Comision Exportadora de Yucatan being exempted from such tax. An English translation of this law is annexed hereto, marked "Exhibit H," and prayed to be considered a part hereof.

This made the total discriminatory taxes in favor of the Comision Exportadora de Yucatan, including the Federal surtax of 25 per cent, amount to 15 cents Mexican per kilo (approximately 3⅜ cents U. S. gold per pound). The immediate result was to put independent buyers out of business, causing them to close their offices and return to the United States, thus perfecting a complete monopoly in Mexican sisal. Shortly thereafter the Comision Exportadora de Yucatan began paying the Yucatan producer 3½ cents per pound instead of 4 cents per pound for sisal. Sisal was then being sold by the Sisal Sales Corporation in the United States at 6¼ cents Gulf (6½ N. Y.) per pound.

(J) Stored sisal of Comision Monetaria sold to Comision Exportadora de Yucatan

38 In December, 1922, there was still a considerable quantity (approximately 101,461 bales) of stored sisal in the United States pledged to the Eric Corporation, in which the Comi-

sion Monetaria had an equitable interest. This sisal had been withheld from the market for more than one year. Through the influence of the Sisal Sales Corporation, the Eric Corporation, and the interested banks, and for the purpose of protecting the Eric Corporation from losses which unrestrained competition would have necessitated and of insuring to the Sisal Sales Corporation a complete control of the trade and commerce in sisal in the United States, an agreement was reached whereby the Comision Exportadora de Yucatan finally purchased this sisal on or about December 22, 1922, for the sum of $3,488,268.53, pledging such sisal to The Equitable Trust Company of New York, the payments to be made by the Sisal Sales Corporation out of the funds obtained from sales of sisal for the account of the Comision Exportadora de Yucatan: and as a part of such agreement the Mexican Federal Government suspended the imposition of the Federal export tax of 2 cents Mexican per kilo (about ½ cent U. S. gold per pound) on sisal for the year 1923.

(K) Contract between Sisal Sales Corporation and New York and Cuba Mail Steamship Company

In order to impede and prevent any competitor from importing
sisal from Yucatan into the United States, the Sisal Sales Corpo-
ration entered into a contract with the New York and Cuba
Mail Steamship Company, the only line regularly operating
39 vessels for the carrying of freight between ports of the United
States and the ports of Progreso and Campeche, under the
terms of which the said steamship company was to transport sisal
exclusively for the Sisal Sales Corporation. This contract was dated
May 12, 1923, became effective June 1, 1923, and was to remain in
effect for one year from that date. During the life of said contract
the steamship company regularly refused to transport shipments of
sisal tendered by competitors of the Sisal Sales Corporation, and
such refusals have been made since.

A receiver was appointed for the said steamship company on December 31, 1923, and the contract was cancelled by him on or about February 15, 1924.

(L) Contract of June 19, 1923, between the Sisal Sales Corporation and the Comision Exportadora de Yucatan

Further in pursuance of the hereinbefore alleged combination, conspiracy, and monopoly, and to effect the object of the same, a contract was entered into at New York City, in the Southern District of New York, June 19, 1923, between the Sisal Sales Corporation and the Comision Exportadora de Yucatan. Said contract is supplemental to the contract dated December 22, 1921, between the Sisal Sales Corporation and the new Comision Reguladora del Mercado de Henequen.

By this contract the Sisal Sales Corporation's commission on all sales for the account of the Comision Exportadora de Yucatan 40 was reduced from 6 per cent to 3 per cent beginning June 1, 1923. In addition, the Sisal Sales Corporation agreed to lend the Comision Exportadora de Yucatan a sum not exceeding $1,500,000 to enable it to make loans to the planters. Said loans are to be made in instalments not exceeding $100,000 per month from July to December, 1923, inclusive, and not exceeding $180,000 per month from January to May, 1924, inclusive. The notes are to mature on the 15th day of each month commencing July 15, 1924, and ending September 15, 1925. Interest is provided at 8 per cent. The loans are to be evidenced by notes secured by notes of the planters, which notes are assigned to the Sisal Sales Corporation and constitute a first lien on the plantations.

A copy of this contract is annexed hereto marked Exhibit I, and prayed to be considered a part hereof.

VII

THE RESULTS

As the result of the aforesaid unlawful combination, conspiracy, and monopoly, and the several acts and things done in pursuance thereof, the defendants have acquired and now enjoy a complete monopoly of the interstate and foreign trade and commerce of the United States in sisal. The Comision Exportadora de Yucatan, with the financial backing of the Sisal Sales Corporation, has become the sole purchaser of sisal from producers in Mexico. The Sisal Sales Corporation has become the sole importer and 41 distributor of Mexican sisal in the United States. Binder twine manufacturers and brokers who formerly competed with one another for the purchase of sisal in Mexico and in the United States and enjoyed the advantage resulting from such competition as existed among the sellers now are compelled to obtain all of their requirements from the Sisal Sales Corporation. Thus the trade and commerce of the planters, the brokers, and the manufacturers is restrained and prices are arbitrarily fixed by the defendants.

The defendants, by establishing unwarranted prices for new sisal and by restricting the production thereof, and by compelling manufacturers of binder twine, in their purchases of fresh sisal, to accept and use large quantities of the surplus sisal formerly owned by the Eric Corporation, much of which was of inferior quality, at prices far in excess of those warranted by normal and unrestrained competitive conditions, have thus disposed of said large stocks of stored sisal at the expense of the manufacturers of binder twine and the farmers who use the same. Interstate and foreign trade and commerce in sisal has been and is being burdened and restrained by the exaction of large sums in the form of excessive profits and commissions, resulting in the undue enhancement of prices.

About one million bales (375 to 400 pounds per bale) were shipped from Yucatan and sold in the United States in the years 1922 and 1923. The average profit realized by the Comision Exportadora de Yucatan and the Sisal Sales Corporation was about 42 2 cents per pound, which is about 1¾ cents per pound in excess of the usual profit charged by independent sisal dealers under competitive conditions. This amounts to a total profit of approximately $8,000,000, which means that during those two years an excessive profit on fresh sisal of approximately $7,000,000 was paid to said defendants by the binder-twine manufacturers and ultimately by the farmers of the United States, and without the farmers of Yucatan receiving any part of such sum.

In November, 1921, the Eric Corporation quoted and sold some of its stored sisal at a price of 2¾ cents, Gulf. In January, 1922, less than two weeks after the execution of the contract between the Sisal Sales Corporation and the Comision Reguladora del Mercado de Henequen (now the Comision Exportadora de Yucatan) and less than sixty days after the sale of sisal by the Eric Corporation at 2¾ cents Gulf per pound, the price of sisal was raised to 6½ cents Gulf (6¾ cents New York) per pound. During the years 1922 and 1923 the Sisal Sales Corporation reserved the right to deliver from twenty-five to fifty per cent of the stored sisal formerly held by the Eric Corporation on all orders, and during a large part of that period it was impossible for binder-twine manufacturers in the United States to secure fresh Mexican sisal without being forced by the Sisal Sales Corporation to accept with each purchase a considerable quantity of stored sisal.

On December 22, 1921, the day of the execution of the formal 43 contract between the Sisal Sales Corporation and the Comision Reguladora del Mercado de Henequen (now the Comision Exportadora de Yucatan), the Eric Corporation agreed to sell, and shortly thereafter did sell, to said Comision its stored sisal at a price of 7 cents per pound. While such stored sisal was subsequently sold during the years 1922 and 1923 by the Sisal Sales Corporation for the account of the Comision Exportadora de Yucatan to manufacturers in the United States at a price of from 6 cents Gulf to 6½ cents Gulf per pound, thus showing a loss by the Comision Exportadora de Yucatan on said transaction, which loss was more than overcome by the excessive profit on fresh sisal, the Eric Corporation and its affiliated banks greatly profited thereby; and the Sisal Sales Corporation, controlled by the same interests as the Eric Corporation, received, in addition to the interest on its loans to the Comision Exportadora de Yucatan, a commission of six per cent on the gross sales of such sisal.

On the gross sales of both fresh and stored sisal for the account of the Comision Exportadora de Yucatan, which, during the year 1922, amounted to more than $15,000,000, the Sisal Sales Corporation, receiving a commission of 6 per cent on such sales, obtained in that one year, exclusive of the interest on its advances of money to the Comision Exportadora de Yucatan, a profit of more than $900,000 upon an investment represented by a capital stock of only $1,500. In the year 1923 its sales amounted to nearly $20,000,000 and its total profits were as great as those of the preceding year.

44 In the year 1924 the Sisal Sales Corporation raised the price of sisal in the United States to 7½ cents per pound and is now executing contracts with manufacturers for the sale of sisal at such price.

PRAYER

Wherefore, petitioner prays that writs of subpœna be issued, directed to each of the defendants, commanding them to appear herein and answer, but not under oath (answer under oath being hereby expressly waived) the allegations of the petition, and to abide by such orders and decrees as the court may make in the premises.

And further that the court adjudge and decree:

1. That the defendants in the manner and by the means hereinabove described have been and are engaged in an unlawful combination, conspiracy, or agreement to restrain interstate and foreign trade and commerce in sisal and to increase throughout the United States the market price of sisal as an article imported or intended to be imported into the United States, and have monopolized and are attempting to monopolize such interstate and foreign trade and commerce, and that the hereinabove described contracts dated December 22, 1921, and June 19, 1923, are contracts in restraint of such interstate trade and commerce, in violation of the antitrust laws of the United States, particularly the "Act to protect trade and commerce against unlawful restraints and monopolies," approved July 45 2, 1890, and section 73 of the act commonly known as the Wilson Tariff Act of August 27, 1894, as amended by the act of February 12, 1913.

2. That the defendants and each of them, the officers, directors, and agents of the Sisal Sales Corporation, and the representatives and agents of the Comision Exportadora de Yucatan in the United States, and all other defendants heretofore named, be perpetually enjoined from doing any act in pursuance of or for the purpose of carrying out the above-described combination, conspiracy, monopoly, and contracts, and from entering into or continuing any similar combination, conspiracy, monopoly, and contracts, and from combining, conspiring, or agreeing to restrain interstate and foreign trade and commerce in sisal or to increase the price of sisal in the United States, and from monopolizing or attempting to monopolize, or combining or conspiring to monopolize, interstate and foreign trade and commerce in sisal.

3. That the Sisal Sales Corporation is an instrumentality created to carry into effect the purpose of the combination, conspiracy, or agreement hereinbefore described, in violation of the antitrust laws of the United States, and that it be enjoined from engaging directly or indirectly in interstate trade and commerce within the United States or in trade and commerce between the United States and foreign nations under the contracts and arrangements herein alleged or any other contracts or arrangements having a like purpose.

46 4. That the contract of December 22, 1921, between the Sisal Sales Corporation and the Comision Reguladora del Mercado de Henequen (now Comision Exportadora de Yucatan) and supplemental contract of June 19, 1923, between the Sisal Sales Corporation and the Comision Exportadora de Yucatan be declared null and void, and that each of the defendants be enjoined and restrained from further carrying out the same.

5. That the petitioner have such other, further, and general relief as the nature of the case may require and the court deem just.

United States of America,
By Wm. Hayward,
United States Attorney.

Harlan F. Stone,
Attorney General.
Augustus T. Seymour,
Assistant to the Attorney General.
J. A. Fowler,
Abram F. Myers,
Miller Hughes,
Special Assistants to the Attorney General.

Exhibit A to petition

Agreement made this 23rd day of January, 1920, by and between Eric Corporation, a corporation of the State of Delaware, party of the first part; and Comision Reguladora del Mercado de Henequen, a corporation of the State of Yucatan, Republic of 47 Mexico (hereinafter called the Comision), party of the second part:

Witnesseth, that for and in consideration of the mutual covenants herein contained the parties hereto agree as follows:

1. Eric Corporation agrees forthwith to cause its present authorized common capital stock, amounting to $100,000, to be paid in full in cash and to increase the amount of its authorized common stock from $100,000, as at present, to $200,000.

2. Immediately upon the completion of such increase in the amount of its authorized capital stock as aforesaid, and upon notice thereof duly given to the comision in writing, addressed to it at its office, No. 120 Broadway, New York City, the comision shall have the privilege, for a period of forty-five (45) days from the date of this agreement, of subscribing and paying for in cash, $99,000 par value

of the common capital stock of Eric Corporation represented by the amount of the increase in the authorized capital stock of Eric Corporation as aforesaid.

3. Eric Corporation represents that on December 31, 1919, for the aggregate sum of $6,738,395.70 it purchased from The Equitable Trust Company of New York and The Royal Bank of Canada (1) approximately 249,000 bales of sisal formerly pledged with said two institutions by the comision as security for loans made by them to the comision and acquired by said two institutions in accordance with the terms of said pledge; and (2) certain claims against the comision in favor of said two institutions secured by the assignment by the comision of certain invoices and contracts, said claims together aggregating the principal sum of $1,758,495.70, which includes interest to December 31, 1919, said claims representing 48 the unpaid balance due on said loans to said two institutions from the comision, the remainder of said loans having been paid out of the collateral security therefor and otherwise, which said claims Eric Corporation hereby agrees to cancel and release in favor of the comision, Eric Corporation retaining, however, the assigned invoices and contracts now held as security for said claims.

4. The comision hereby agrees forthwith to sell and deliver, free and clear of all encumbrances, and Eric Corporation agrees to buy, all the sisal, aggregating approximately 150,000 bales, now pledged with Samuel T. Murdock, of Indianapolis, Indiana, and the Interstate Trust & Banking Company, of New Orleans, Louisiana, and associates, at a price of $25.00 per bale, payment to be made in the promissory notes or other written evidences of indebtedness of Eric Corporation bearing interest at the rate of 6 per cent per annum.

5. The comision hereby sells and delivers, and Eric Corporation hereby buys, all sisal now owned or held by the comision in the States of Yucatan and Campeche, Mexico, aggregating approximately 250,000 bales, the same to be paid for on a basis of $25.00 per bale f. o. b. United States gulf ports. It is understood and agreed that title to said sisal shall pass to Eric Corporation immediately upon the execution of this agreement. Said sisal shall be stored while in Yucatan and Campeche free of charge by the comision, and while so stored shall be definitely and clearly set aside and marked as the property of Eric Corporation. Said sisal shall be transported by the comision, at its sole expense, to United States gulf ports when and as called for by Eric Corporation, and 49 payment therefor, or any part thereof, shall be made only upon arrival at United States gulf ports as aforesaid in the medium hereinafter in paragraph 7 hereof more particularly described. Said sisal while in storage and in transit as aforesaid shall be at the sole risk of the comision, it being definitely understood and agreed that there shall be no obligation on the part of Eric Corporation to pay for any sisal unless and until it is received by Eric Corporation at United States gulf ports as aforesaid. As a condition

precedent to payment as aforesaid all of such sisal shall be inspected and graded so that its average quality shall equal the sisal referred to in paragraph 3 hereof.

6. When and as the sisal mentioned in the next preceding paragraph shall be delivered to Eric Corporation in the United States as therein provided, Eric Corporation will procure to be advanced in cash, for account of the comision, the amount necessary to pay storage, hauling and freight charges from Merida or Campeche to the port of delivery in the United States, and all Mexican federal export taxes which may have been levied upon said sisal, the entire amount of such advance not to exceed two cents per pound upon the sisal so delivered. Interest at the rate of 7 per cent per annum shall be paid on said advances, and as security for the said advances the comision shall give the preferred capital stock of Eric Corporation, which is to be issued by the latter and acquired by the comision of Eric Corporation, as set forth in the paragraph next following, the amount of any or all of said advances in no case to exceed 90 per cent of the face value of said stock offered as collateral security therefor.

50 7. The purchase consideration for all sisal purchased and sold pursuant to paragraph 5 hereof shall be paid in full-paid nonassessable 7 per cent cumulative preferred capital stock of Eric Corporation at its par value. Said preferred capital stock shall be without voting power and shall contain a provision providing for its retirement at par in units of $200,000 out of sinking fund to be established as set forth in paragraph 8 hereof, if and whenever the funds in said sinking fund aggregate said amount.

8. Out of the proceeds of all sales of sisal hereafter made by it, and so long as any of said preferred stock shall remain outstanding, Eric Corporation shall pay into a special sinking fund the sum of $8.33⅓ per bale from all sisal sold and paid for, said sinking fund to be established for the purpose of retiring at par the preferred capital stock of Eric Corporation, as set forth in paragraph 7 hereof.

9. Eric Corporation shall have the privilege of forming a corporation under the laws of such jurisdiction as Eric Corporation shall select, for the purchase of sisal in the States of Yucatan and Campeche, Mexico, all of the capital stock of which, except the directors' qualifying sharees, shall be owned by Eric Corporation, or may contract with any corporation for this service.

10. Eric Corporation agrees to use its best endeavors to assist the comision in obtaining funds necessary to pay approximately $600,000 obligation of the comision due on or about February 1, 1920.

11. It is agreed that the expenses for the present offices and for such force as is necessary for the maintenance of the New York representatives of the comision shall be assumed by Eric Corporation as of March 1, 1920, or earlier if convenient, the expense of the comision's representation in the same, aside from rent, not to exceed in amount the sum of $12,000 per annum. 51

12. It is understood that Eric Corporation is to send as promptly as possible representatives to Yucatan for the purpose of assisting the comision in carrying out in good faith the intents and purposes of this agreement.

13. This agreement shall not be binding upon either of the parties hereto unless and until it shall be formally executed and delivered by both of the parties hereto.

In witness whereof the parties hereto have caused these presents to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

ERIC CORPORATION,
By F. W. BLACK, *Vice President*.

Attest:

LYNN H. DINKINS, *Secretary*.
COMISION REGULADORA DEL
MERCADO DE HENEQUEN,
By ARTURO ZAVALLA and
RICARDO MOLINA, *Attorneys in fact*.

STATE OF NEW YORK,
County of New York, ss:

On this 26 day of January, in the year one thousand nine hundred and twenty, before me personally came F. W. Black, to me known, who, being by me duly sworn, did depose and say that he 52 resides in Brooklyn, New York; that he is the Vice Pr. of Eric Corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

ISABEL W. BONNER,
Notary Public.

No. Co. #196.
STATE OF NEW YORK,
County of New York, ss:

On this 26 day of January, in the year one thousand nine hundred and twenty, before me personally came Arturo Zavalla and Ricardo Molina, the attorneys for Comision Reguladora del Mercado de Henequen, to me known and known to me to be the persons described in and who as such attorneys executed the foregoing instrument, and acknowledged that they executed the same as the act and deed of said Comision Reguladora del Mercado de Henequen therein described by virtue of a power of attorney bearing date the —— day of ——.

ISABEL W. BONNER,
Notary Public.

No. Co. #196. Registers Office No. 10036. Comn. Exp. March 25, 1920.

53 MERIDA, *February 21st, 1920.*

COMISION REGULADORA DEL MERCADO DE HENEQUEN, *City.*

GENTLEMEN: Referring to the agreement between our respective corporations dated as of the 23d day of Jany., 1920, we hereby make the following proposals:

(1) With respect to the storage charges on the sisal acquired by us under said agreement while said sisal is stored in the States of Yucatan and Campeche, Mexico, which charges you have under said contract agreed to assume and pay, for good and valuable considerations, Eric Corporation hereby agrees to require you to assume and pay only such of said charges as are accrued or which shall accrue during a period of one year from the date hereof; Eric Corporation agrees to assume and pay for all of the said charges which shall accrue after the expiration of said period.

(2) With respect to all existing obligations of Eric Corporation issued for the purchase of sisal, for good and valuable considerations, we hereby agree to procure the payment of said obligations to be extended for a period of at least one year from the date hereof.

(3) Should the Reguladora at any time within one year from date hereof desire loans to be made to it not exceeding six hundred thousand dollars secured by pledge of the preferred stock, on a basis of ninety per cent of its par value and at a rate not exceeding eight per cent interest, the Eric Corporation will arrange such loans provided they shall be paid protanto from funds of the Reguladora which may at any time be in the custody of the Eric Corporation arising
54 from the sale of the sisal now stored in the United States of America, which funds the Eric Corporation is authorized to retain for such purpose.

Your acceptance hereof, if and when affixed in writing hereto, shall constitute a binding agreement between our respective corporations.

ERIC CORPORATION,
By LYNN H. DINKINS, *Secty.*
COMISION REGULADODA DEL MERCADO
DE HENEQUEN,
By JAUN LOPEZ PENICHE,
Gen. Manager.

Referring to the agreement made the 23 day of January, 1920, between Eric Corporation, a corporation of the State of Delaware, party of the first part, and Comision Reguladora del Mercado de Henequen, a corporation of the State of Yucatan, Republic of Mexico (hereinafter called the comision), party of the second part, We the undersigned, constituting all the stockholders of Eric Corporation, for and in consideration of the subscription to the capital stock of Eric Corporation contemplated by said agreement to be made by the comision, and in consideration of the mutual agreements herein contained, hereby jointly and severally agree among ourselves and with

the comision that if and when the comision shall subscribe and pay for the $99,000 par value of the common capital stock of Eric Corporation, as provided in the paragraph marked 2 of said agreement, we, as stockholders of Eric Corporation, will so vote our stock and do and perform all other things reasonable and necessary in order to elect to the Board of Directors of Eric Corporation such representatives of the comision as the comision shall nominate there-
55 for, so as to give the comision a representation on said board equal to one member less than the majority of said board of directors.

In witness whereof the parties hereto have executed these presents, or caused the same to be executed by their respective officers thereunto duly authorized, as of the 9th day of January, 1920.

THE ROYAL BANK OF CANADA,
By F. T. WALKER, *Agent.*
THE EQUITABLE TRUST COMPANY
OF NEW YORK,
By H. M. WALKER, *Vice Pres.*
INTERSTATE TRUST & BANKING
COMPANY.
By LYNN H. DINKINS, *President* (L. S.),
COMISION REGULADORA DEL MERCADO
DE HENEQUEN,
By ARTURO ZAVALA and
RICARDO MOLINA,
Attorneys in fact.

Exhibit B to petition

This agreement, made and entered into this twentieth day of April, 1921, by and between Comision Monetaria, of the City of Mexico, D. F., a commission organized and existing under the laws of the Republic of Mexico, legally represented by its manager, Mr. Santana Almada, party of the first part, and Eric Corporation, a corporation organized and existing under the laws of the State of Delaware, United States of America, legally represented by its vice president, Mr. John B. Glenn, party of the second part.

56 Witnesseth:

In consideration of the mutual promises hereinafter set forth the parties hereto hereby agree each with the other as follows:

First. Eric Corporation hereby agrees to loan to Comision Monetaria, upon the terms hereinafter set forth, such amounts of money as may from time to time, prior to the expiration of a period of two years from the date of this agreement, be necessary in order to enable the Comision Monetaria to purchase in the open market sisal currently produced in the States of Yucatan and Campeche, Mexico, at such price per pound as may from time to time be agreed upon between Eric Corporation and Comision Monetaria as hereinafter provided.

Second. Each advance made by Eric Corporation to Comision Monetaria as aforesaid shall be paid over to Comision Monetaria in gold coin of the United States and/or by sight drafts on New York payable in currency of the United States of America, at Merida, Yucatan, in exchange for a promissory note or notes of the Comision Monetaria payable to the order of the Eric Corporation at the office of the Eric Corporation in the city of New York, United States of America, in currency of the United States of America, of an aggregate principal amount equal to the amount so advanced. Each and every of the aforesaid promissory notes of the Comision Monetaria shall be secured by the delivery to the Eric Corporation in pledge as collateral security therefor of negotiable warehouse receipts covering the sisal against the purchase of which by the Comision Monetaria the advance evidenced by such promissory note
57 shall have been made, and each and every of such promissory notes shall be payable on demand and shall bear interest at the rate of eight per cent (8%) per annum payable monthly.

Third. The amounts from time to time to be advanced by the Eric Corporation to the Comision Monetaria as hereinabove provided shall be at such price per pound for sisal purchased as shall from time to time be agreed upon between the Eric Corporation and the Comision Monetaria. The initial rate at which such advances shall be made, so long as such rate shall be satisfactory to both the Eric Corporation and the Comision Monetaria as aforesaid, shall be five and one-quarter cents (5¼¢) per pound, f. o. b. Progresso, Yucatan.

Fourth. Comision Monetaria does hereby irrevocably make, constitute, and appoint the Eric Corporation the agent of the Comision Monetaria to sell all of the sisal against which such advances shall have been made by the Eric Corporation as hereinabove provided, at such price or prices as may be fixed jointly by the Eric Corporation and the Comision Monetaria, and the Comision Monetaria does hereby agree to pay to the Eric Corporation a selling commission of one-quarter of one cent ($0.0025) United States currency per pound upon all sisal sold by the Eric Corporation as such agent, such commission to be deducted from the account sales and retained by the Eric Corporation out of the selling price of the sisal.

Fifth. The Comision Monetaria hereby authorizes the Eric Corporation to make all necessary arrangements to transport the sisal purchased by the Comision Monetaria as hereinabove provided to whatever place or places the Eric Corporation may deem desir-
58 able; to store the same when, where and as the Eric Corporation may determine; and to cover the same with insurance; and the Comision Monetaria hereby agrees to reimburse the Eric Corporation monthly, on the 15th day of each month, at Mexico City, Mexico, in gold coin of the United States of America and/or sight draft on New York payable in currency of the United States of America; and/or at the office of the Eric Corporation in New York City in currency of the United States of America, all at the option of the Eric Corporation, for all expenditures made by the Eric Cor-

poration during the preceding month in connection with the handling, transportation, storage or insurance of, or other expenses incurred in connection with, all sisal purchased by the Comision Monetaria as hereinabove provided, including all expenses of the organization maintained by the Eric Corporation in Yucatan and Campeche in connection with the purchase of such sisal. It is understood that all export duties or other taxes assessed against the sisal purchased by the Comision Monetaria hereunder will be paid by the Comision Monetaria. If any of such duties or taxes should, however, be paid by the Eric Corporation, the Comision Monetaria agrees to reimburse the Eric Corporation for any amounts so paid, monthly in the manner aforesaid.

Sixth. It is understood and agreed that the Eric Corporation shall have full power to negotiate by pledge, sale, or otherwise all promissory notes of the Comision Monetaria delivered to the Eric Corporation hereunder and to rehypothecate the sisal pledged to secure the same.

Seventh. This agreement shall be binding upon and shall enure to the benefit of the successors and assigns of the parties hereto.

59 In witness whereof both contracting parties ratify each and all of the foregoing clauses, signing this contract in duplicate, on the 20th day of April, 1921.

COMISION MONETARIA,
By E. VON BORSTEL,
SANTANA ALMADA,
ERIC CORPORATION,
By JOHN B. GLENN.

Conforme:
ADOLFO DE LA HUERTA.

Exhibit C to petition

Agreement made the twelfth day of September, nineteen hundred and twenty-one, between Eric Corporation, a corporation duly organized under the laws of the State of Delaware, hereinafter called the "company," and Hanson & Orth, a copartnership composed of Charles D. Orth, Michael J. Smith, and Charles D. Orth, jr., hereinafter called the "partnership."

Whereas the company is the owner of a large amount of sisal and desires the cooperation of the partnership in marketing it,

Now, therefore, It is hereby mutually agreed by and between the parties hereto as follows:

I. The partnership shall become the general managers of the business of the company in the manufacture, sale, vending, and disposing of its sisal or the products thereof in accordance with and in consideration of stipulations and terms hereinafter following.

60 II. In managing said business the partership shall use its best endeavors and skill and all necessary time to procure the

greatest possible sale of all such sisal, whether in its raw state or a
a manufactured product.

III. All contracts shall be signed by the company, and all war
house receipts and other documents connected with the property o
business of the company shall be in its name.

IV. The general policy to be followed in marketing said sisal or i
products and the amounts in which, and the prices at which, sai
sisal or the products thereof shall from time to time be sold, shall i
every case be subject to the approval and under the exclusive contr
of the company, but the general policy so adopted and the sales s
made shall be executed by the partnership on behalf of the compan

V. Full information of all details connected with the business o
the company and all conditions prevailing in other markets affectin
the sisal trade shall be available to the company from the partnershi

VI. At the option of the company its routine office work may b
transferred to the offices of the partnership, in which event suc
routine work as stenography and bookkeeping shall be done by th
staff of the partnership without additional charge, but all travelin
expenses, hotel bills, telephone, telegraph, cable expenses, &c
incurred in connection with the said business, shall be paid by th
company, it being the intent that the expenses of the partnership i
connection with the said business shall be limited to its own offic
and office staff.

Both the company and the partnership, or their respective agent
shall at all reasonable times have access to the books of accoun
61 or other records of the company, which shall be maintaine
or kept by either party to this agreement.

VII. In consideration of the true and faithful performance of th
covenants herein contained by the partnership, the company sha
pay or cause to be paid to the partnership the sum of fifty thousan
dollars ($50,000) per annum, commencing on the first day of Septem
ber, nineteen hundred and twenty-one, payable in equal monthly in
stalments of $4,166.67 each on the last day of September, ninetee
hundred and twenty-one, and on the last day of each and ever
month thereafter during the term of this agreement; and, except a
hereinafter provided, in addition a commission of one per cent (1%
on the sale price of all sisal or other merchandise now owned by th
company, sold by the company subsequent to the first day of Septem
ber, nineteen hundred and twenty-one, and during the terms of th
agreement, whether it be sold in the form of raw material or as
manufactured product, and whether sold through the partnership o
otherwise; said commission to be due and payable from time to tim
as and when the sale price of any such merchandise is received by th
company. It is understood and agreed, however, that in the even
that the company shall, subsequent to September 1, 1921, and prior t
September 30, 1921, sell all of the sisal or other merchandise the
owned by it in one lot, en bloc, then in such event the company sha

pay to the partnership a commission of one-half of one per cent instead of one per cent on the sale price of the sisal or other merchandise so sold.

The company shall keep correct books of account of all sales receipts, which books shall be open to the inspection of the partnership or its agents at all reasonable times. The company shall render statements to the partnership of such sales receipts whenever so requested by the partnership. 62

VIII. The term of this contract shall commence on the first day of September, nineteen hundred and twenty-one, and continue until all of the sisal or products thereof now owned by the company is sold either in its raw state or as a manufactured product, when, at the option of the company by written notice to the partnership, this agreement shall terminate.

In witness whereof, the parties hereto have signed and sealed this agreement.

Eric Corporation,
By F. T. Walker,
Vice Pres.
A. E. Scheithe,
Secy. and Treas.
Hanson & Orth.
By Michael J. Smith,
Partner.

Exhibit D to petition

This agreement made and entered into this 1st day of April, 1924, by and between Sisal Sales Corporation, a corporation organized and existing under the laws of the State of Delaware (hereinafter referred to as the "corporation"), party of the first part, and Charles D. Orth, Michael J. Smith, and Charles D. Orth, jr., copartners doing business under the firm name and style of Hanson & Orth (hereinafter referred to as the "partnership"), parties of the second part,

63 Witnesseth:

Whereas the corporation is acting as sole general agent for the Comision Exportadora de Yucatan, an institution created by act of the Legislature of the State of Yucatan, Mexico, in connection with the sale of sisal hemp pursuant to an agreement between the corporation and said Comision Exportadora de Yucatan, dated December 22, 1921, and an agreement between the same parties supplemental thereto dated June 19, 1923, for a term of five years from the 31st day of December, 1921, and the corporation desires to engage the services of the partnership as general managers of the business of the corporation during the continuation of the aforesaid contract between the said Comision Exportadora de Yucatan and the corporation dated December 22, 1921, as modified by said agreement supplemental thereto, and the partnership is willing to act as such general managers upon the terms hereinafter set forth:

Now, therefore, in consideration of the premises and of the mutual promises hereinafter set forth, the parties hereto do hereby respectively covenant and agree each with the other as follows:

I. The corporation hereby agrees to employ, and does hereby employ, the services of the partnership as general managers of the business of the corporation, as general agent of the Comision Exportadora de Yucatan, so long as the corporation shall act as general agent for the Comision Exportadora de Yucatan under the terms of the aforesaid contract between said Comision Exportadora de Yucatan and the corporation, dated December 22, 1921, as modified by said agreement dated June 19, 1923, and the partnership
64 hereby agrees to act as such general manager during such period, all upon the terms and conditions hereinafter set forth.

II. In managing the business of the corporation the partnership will at all times use its best endeavors and skill and give all necessary time and attention to selling all sisal which the corporation may desire to sell, either for its own account or otherwise; to oversee the preparation of all account sales and other accounts which the corporation may be required to render; to make all arrangements for the storage and insurance of sisal which the corporation may be required to make; to keep said Comision Exportadora de Yucatan advised regarding the fiber markets of the world; and generally to supervise and assist the corporation in carrying out all of the terms and conditions of said contract between said Comision Exportadora de Yucatan and the corporation dated December 22, 1921, as modified by said agreement dated June 19, 1923, on the part of the corporation to be performed.

III. The general policy to be followed in transacting the business of the corporation shall in every case be subject to the approval and under the exclusive control of the directors of the corporation. The routine work of stenography and bookkeeping shall be done by the staff of the partnership, under the direction of the officers of the corporation, without charge, but all traveling expenses, hotel bills, telephone, telegraph, cable, and other expenses incurred by the partnership in connection with the business of the corporation shall be paid by the corporation, it being expressly understood and agreed that under no circumstances is the partnership to assume any liability, as principal or otherwise, except as to the expenses here-
65 inabove expressly set forth. Both the partnership and the corporation or their respective agents shall at all reasonable times have access to the books of account and other records of the corporation.

IV. In consideration of the true and faithful performance of the covenants herein contained on the part of the partnership to be performed, the corporation will pay or cause to be paid to the partnership a commission of one per cent (1%) on the sales price of all sisal sold by the corporation from and after the date of this agreement and until its termination as hereinafter provided.

V. From and after the date hereof, this contract shall continue in full force and effect so long as the corporation shall act as selling agent for the Comision Exportadora de Yucatan under the terms of the aforesaid agreement between the corporation and said Comision Exportadora de Yucatan dated December 22, 1921, as modified by said agreement dated June 19, 1923, but in the event that this corporation shall at any time cease to act as selling agent for said Comision Exportadora de Yucatan under said agreement dated December 22, 1921, as modified by said agreement dated June 19, 1923, either before or at the time of the termination of said agreement dated December 22, 1921, by lapse of time, then this agreement shall forthwith terminate, but the termination of this agreement shall not affect any rights or liabilities of either of the parties hereto which shall have arisen hereunder prior to the date of such termination.

VI. The partnership hereby acknowledges receipt of all sums payable to it by the corporation on account of services rendered by the partnership prior to April 1, 1924, and of all commissions or 66 other compensation payable to it by the corporation in connection with the sale of sisal delivered prior to April 1, 1924.

In witness whereof, the parties hereto have signed and sealed this agreement as of the day and year first above written.

SISAL SALES CORPORATION,
By F. W. BLACK, *Vice President.*
F. T. WALKER, *V. P.*

Attest:

EDGAR JEWELL, *Secretary.*
HANSON & ORTH.
By CHAS. D. ORTH,
MICHAEL J. SMITH,
CHARLES D. ORTH, Jr.

Exhibit E to petition

A SPECIAL EXTRAORDINARY TAX OF EIGHT CENTS, NATIONAL CURRENCY, FOR EACH KILOGRAM IS IMPOSED ON RAW HEMP

Decree No. 361

I, Licenciate Manuel Berzunza, provisional constitutional governor of the free and sovereign State of Yucatan, make known to the inhabitants thereof the following:

The Hon. XXVI Congress of the free and sovereign State of Yucatan, in the name of the people, decrees:

Article first. For the protection and defense of the hemp industry in the State and of its trade, there is imposed on raw hemp a 67 special extraordinary tax of eight cents, national currency, for each kilogram. This tax shall be paid by the fibre producers, who shall not be able to sell it without previously proving that they have duly made payment thereof. There is included in this tax all hemp which has been produced and not sold by the producer, wherever said hemp may be stored.

Article second. The tax in question shall be collected by the office of the general treasury of the State, in accordance with the regulative laws regarding the collection of all tax on hemp, it being necessary to keep a special accounting for all receipts.

Article third. The office of the general treasury of the State shall deliver weekly all the proceeds of the collection of the aforementioned tax to the Comision Reguladora del Mercado de Henequen.

Article fourth. The Comision Reguladora del Mercado de Henequen shall employ the proceeds of said tax solely and exclusively to the regulation of the hemp market, in conformity with article 19 of the law of July 16th of the current year.

Article fifth. The office of the general treasury of the State shall obtain from the buying firms of hemp in the State a statement of the sales effected on the day of the promulgation of the present law for the purpose of the payment of the tax referred to in article first.

Article sixth. The office of the general treasury of the State shall establish in accordance with article second of this law a special department for the management and administration of the collection of the tax in question.

68 **TRANSITORY**

Only article. This law takes effect the day of its promulgation.

Issued in the palace of the legislative power, in Merida, on the 13th day of December, 1921.

Luis Torregrosa, D. P.; R. Gamboa, E., D. S.; Mig Canton, D. S.

Accordingly, I order it to be printed, circulated, and published for public knowledge and due compliance.

Palace of the executive power, in Merida, Yucatan, December 13, 1921.

MANUEL BERZUNZA.

MAX. MENA. G.,
The Secretary General.

Exhibit F to petition

Law for the restriction of the production of hemp

Decree No. 362

Lawyer Manuel Berzunza, acting constitutional governor of the free and sovereign State of Yucatan, I make known:

That the Hon. XXVII Congress of the free and sovereign State of Yucatan, in the name of the people, decrees:

Article 1. The henequen industry in the State is declared to be of public interest, its exploitation and production being under official safeguard.

Article 2. The annual production of hemp will be reduced according to the following bases:

The farmer who produces from 115,001 kilos to 230,000 will reduce his production 15 per cent.

69 The farmer who produces from 230,001 kilos to 345,000 will reduce his production 20 per cent.

The farmer who produces from 345,001 kilos to 460,000 will be reduced 30 per cent.

The farmer who produces from 460,001 kilos to 690,000 kilos will be reduced 40 per cent.

The farmer who produces from 690,001 kilos and more will reduce his production 50 per cent.

For the purpose of this reduction with which we are dealing persons who have coproprietorship in one or more farms will be considered as one person only.

Article 3. The State executive will fix the by-laws, adapting all measures and will take all the steps necessary for the true and exact compliance of this law.

Article 4. This law will cease to exist as soon as the stocks of hemp, unmanufactured, which are to be found in the U. S. of North America, disappear, establishing then the economic law of supply and demand.

TRANSITORY

Sole article. This law will be in force the same day that it is promulgated.

Given in the palace of the legislative power in Merida, Dec. 14, 1921. . . .

Published in the Diario Oficial of Dec. 15, 1921. No. 362. (Diario Oficial No. 7402.)

Frans. CBH

70 *Exhibit "G" to petition*

New York, *December 22, 1921.*

Mr. Tomas Castellanos, A.,
Attorney in fact for the Comision Reguladora del Mercado de Henequen, an institution created by an act of the Legislature of the State of Yucatan, Mexico, dated July 16, 1921.

Dear Sir: The old Comision Reguladora, notwithstanding a growing surplus of sisal during the years 1916, 1917, and 1918, advanced the price to previously unheard of figures. This antagonized the manufacturers of binder twine and rope, and led them to utilize every substitute for Yucatan sisal which could be obtained.

At the same time, owing to the World War, there was a great reduction in the demand for binder twine for shipment to the Continent of Europe and to other parts of the world, which was partly due directly to the war, and partly due to the difficulty of making shipments. This further contributed to the reduction of the demand for sisal for binder twine during the period referred to. All these conditions led to the accumulation of an unsold stock in the United States of sufficient magnitude to supply the entire estimated requirements of the market for the season of 1922.

If such requirements for 1922 should be satisfied entirely or substantially out of the stocks now in this country there would be no outlet for the fresh production of Yucatan—a condition which would result in the practical ruin of the sisal hemp industry in Yucatan, as most of the plants would go to flower and would therefore cease to produce fiber. The remaining plants would in the course
71 of a few years also cease to produce, and a large percentage of the industry in Yucatan would become obliterated. The result of this would be that the grain farmers of the United States, and indeed of the world, would find it impossible to harvest their crops, as there is not enough fiber otherwise produced to fill the binder-twine requirements of the world. In other words, should the stocks of sisal now in the United States be utilized for filling the world's requirements for manufacturing binder twine during the 1922 season, thereafter the necessary supplies for the requirements of the world would not exist. To avoid this is an imperative duty of everyone connected with the business.

The ruin of the industry in Yucatan, which is the sole means of sustenance and support of the people of that state, is a condition which every right-minded man connected with the industry should also seek to avoid. On the other hand, in cooperation in any measures that have that object in view, due specifications must be made for the avoidance of the succession of errors which have led to the present condition. The chief of these has been the endeavor of the old Comision Reguladora, as it existed from 1915 and up until recently, to exact undue prices for Yucatan sisal. There is, in our opinion, but one standard for fixing the price and value of Yucatan sisal, and that is the prices which are ruling from time to time in the markets of the world of such other fibers as are of equal or approximately equal intrinsic value. We refer to Java sisal, East African sisal, New Zealand hemp and Manila hemp of, say, current (Government Grade "I") quality. It is not fair to the binder-twine consumers of the world, nor to the best interests
72 of the sisal-hemp planters of Yucatan, to endeavor at any time to secure for Yucatan sisal a price in excess of such indicated value. Moreover, it would in our opinion be contrary to the spirit, if not the letter, of American law.

If it is clearly understood and agreed that the foregoing facts and conditions constitute the fundamentals upon which the agreement is based, the undersigned Sisal Sales Corporation (hereinafter referred to as the "corporation") is willing to enter into the following agreement with Comision Reguladora del Mercado de Henequen (hereinafter referred to as the "comision"), an institution created by act of the Legislature of the State of Yucatan, Mexico, dated July 16, 1921:

The comision will appoint the corporation the general agent of the comision for the purposes hereinafter set forth.

The corporation shall act as selling agent in all of the markets of the world for the comision in connection with the sisal which is now owned or controlled by, or which may hereafter, during the pendency of this agreement, be owned or controlled by the comision.

The corporation agrees to do its utmost to sell such sisal as it may be directed to sell by the comision from time to time.

The comision may draw on the corporation at sight to pay for such purchases as the comision may make in Yucatan from time to time. The amount of such drafts shall be limited to such sums as may from time to time be authorized by the corporation, which agrees to authorize the necessary drafts to cover the cost of such sisal which is purchased in Yucatan to cover actual sales which have been made by the corporation for account of
73 the comision. The comision agrees to do its utmost to secure the sisal necessary to fill all orders which the corporation may be able to secure in the markets of the world. The rate per pound at which such drafts shall be drawn shall be agreed upon from time to time between the comision and the corporation.

Sales made by the corporation shall be for account and risk of the comision and shall be based upon price limits to be given by the comision, which agrees that the prices which it may fix from time to time shall not be higher than those asked by other sellers of sisal nor higher than a fair and reasonable parity of price for sisal based upon its intrinsic value as compared with the prices of other fibers.

The price limits to be given by the comision, as aforesaid, shall be based upon prices stated in U. S. currency per pound free on board Progresso or other port in Mexico; said prices shall include all charges for putting f. o. b., including the Mexican Federal export or other duties, all of which shall be for account of the comision. Import duties charged by the countries to which the sisal may be shipped shall be for account of the eventual buyers. The corporation shall arrive at the price limits at which it shall sell in the countries in which sisal may be sold by adding to the f. o. b. prices described in this paragraph all charges for freight, insurance, short weight, inferior quality, landing and storage charges, commission, and all other charges, and shall sell at not less than prices so arrived at.

The corporation shall account for every shipment at actual sales prices less all charges, and shall send account sales with due despatch after the sisal has been delivered to buyers and has been paid for in full.

74 The comision agrees that it will be responsible for short weight or inferior quality, and that it will pay such allowances as the corporation may require to grant to buyers.

The corporation shall make all arrangements for the transportation of the sisal which it may sell for account of the comision and shall endeavor to effect insurance upon the sisal from the time that the corporation is notified in New York by the comision that such sisal is under the control or at the risk of the comision.

The comision and the corporation shall pay all expenses of maintaining their respective offices, including salaries of clerks, accountants, and other employees, and all cable, mail, and other expenses.

The corporation shall maintain not less than two representatives at Merida, one or more of whom shall be authorized to countersign for the purpose of authentication, drafts drawn by the comision on the corporation. The comision specifically agrees that no draft shall be sold, negotiated, or forwarded for collection unless it has been countersigned as aforesaid by the duly authorized representative of the corporation.

Amount of all drafts drawn by the comision shall be charged to the comision in account current. The net amount of account sales shall be credited in said account current, which shall bear interest at the rate of not less than six per cent per annum.

The corporation shall keep the comision advised regarding the fiber markets of the world, and the comision shall keep the corporation advised of market conditions in Yucatan and Campeche.

In case the comision, for any reason, shall fail to give the
75 corporation selling limits, the corporation is authorized to fill
sales of sisal from other suppliers.

The sales of the corporation for account of the comision shall be made by the corporation as agent for the comision, and the comision assumes full responsibility for all sales so made.

As compensation for services of the corporation in selling, financing, attending to insurance, chartering, warehousing, and all other duties assumed by the corporation hereunder, the comision shall pay to the corporation six per cent on the gross amount of all sales made by the corporation for account of the comision.

This agreement shall be for the term of five years from the date of its final ratification by both parties.

It is understood and agreed that during the term of this agreement the comision shall not confer upon or grant to any agent, other than the corporation, any of the powers or duties conferred upon the corporation by the terms of this agreement, it being the understanding that during said period the corporation shall act as sole agent of the comision in connection with all matters covered by this agreement.

It is understood and agreed that all of the terms of this agreement shall be binding upon and shall enure to the benefit of the successors of the comision.

If the terms of this letter are satisfactory to the comision, will you kindly note the acceptance of the same by the comision on the copy of this letter enclosed herewith, and return said copy to the corporation.

SISAL SALES CORPORATION,
By CHAS D. ORTH, *President.*

76 [Form of assent to be placed on copy of letter]

The undersigned, Comision Reguladora del Mercado de Henequen, an institution created by the Act of the Legislature of the State of Yucatan, United States of Mexico, dated July 16, 1921, does hereby for itself and its successors appoint the Sisal Sales Corporation, a corporation organized and existing under the laws of the State of Delaware, United States of America, the sole general agent of said Comision Reguladora and its successors, for the purposes and during the terms set forth in the foregoing letter from said Sisal Sales Corporation, and does hereby consent and agree to all of the terms and conditions in said letter set forth.

COMISION REGULADORA DEL MERCADO
DE HENEQUEN,
By TOMAS CASTELLANOS ACEVEDO,
Attorney in Fact.

Dated, New York, December 22, 1921.

Exhibit "H" to petition

"Decree creating a special contribution to sustain the stocks of Henequen bought in the United States of North America by the Comision Exportadora of Yucatan.

"Decree No. 19

"Felipe Carillo Puerto, constitutional governor of the free and sovereign State of Yucatan, to its inhabitants makes known:

"That the Hon. XXVII Constitutional Congress of the free and sovereign State of Yucatan, in the name of the people, decrees:

77 "Article first. In order to defray all the necessary expenses of sustaining the stocks of Henequen in the United States of North America, purchased by the Comision Exportadora of Yucatan, there is placed on unmanufactured Henequen a special tax of four centavos national gold for each kilogram which shall be satisfied by the person or business holding title of possessor to said Henequen. Said Henequen shall not be allowed to be shipped without the owner having first proved that he has paid the stated tax.

"Article second. The said tax shall be collected by the Treasury General of the State which shall pay over the proceeds of it weekly to the Comision Exportadora de Yucatan, for the purpose designed in the first article.

"Article third. The Treasury General will exercise all the economic coactive powers especially provided for the receiving and collection of any taxes on Henequen.

"Article four. The object of this tax which the present law establishes being to provide funds to the Comision Exportadora of Yucatan, all Henequen which is transferred by any title to that institution is exempted from the tax.

"Article fifth. This law will be effective the day of its promulgation.

"Done in the Palace of the Legislative Power of the State, in Merida, Yuc., the 7th day of March, 1922. Fabian Castilla N., D. P.—V. Mena P., D. S.—Hector Victoria A., D. S.—Seals.

"Immediately it shall be printed, authorized, circulated, and published for its knowledge and perfection.

78 "Palace of the Executive Power of the State in Merida of Yucatan, on the 7th day of the month of March of one thousand nine hundred and twenty-two.

"Felipe Carrillo,
"*The Secretary-General, Neguir Simon.*"

Exhibit I to petition

This agreement (supplemental to an agreement between the same parties, dated December 22, 1921), made and entered into this 19th day of June, 1923, by and between Comision Exportadora de Yucatan, an institution created by Act of the Legislature of the State of Yucatan, Mexico (hereinafter referred to as the "Exportadora"), party of the first part, and Sisal Sales Corporation, a corporation organized and existing under the laws of the State of Delaware, United States of America (hereinafter referred to as the "Sales Corporation"), party of the second part,

Witnesseth:

Whereas the parties hereto did heretofore, on or about the 22nd day of December, 1921, enter into an agreement by the terms whereof the Exportadora appointed the Sales Corporation the sole general agent of the Exportadora and its successors for the purposes set forth in said agreement, during the term of five years from the date of the final ratification of said agreement by the parties thereto, and as compensation for the services to be rendered by the Sales Corporation under said contract the Exportadora agree to pay the Sales Corporation a commission of six per cent on the gross amount 79 of all sales of sisal made for account of the Exportadora during the term of said contract; and

Whereas said commission was fixed at the rate of six per cent as aforesaid, in part for the purpose of compensating the Sales Corporation for its services in selling, insuring, warehousing, and performing other duties in connection with the large stocks of sisal at that time held by the Exportadora in storage in the United States of America and the stocks of sisal then held by the Exportadora in storage in the United States of America have now been sold, and the Exportadora has requested the Sales Corporation to agree to the readjustment from June 1, 1923, of the rate of commission to be paid by the Exportadora to the Sales Corporation under the aforesaid contract dated December 22, 1921; and

Whereas the Exportadora has advised the Sales Corporation that the maximum amount of sisal which the States of Yucatan and

Campeche in the Republic of Mexico are capable of producing during the next few years is estimated by the Exportadora at not more than 700,000 bales per annum, and the consumption of sisal for the purpose of manufacturing binder twine is estimated by the Sales Corporation to be in excess of 800,000 bales per annum during the same period; and

Whereas the Exportadora has informed the Sales Corporation that it is absolutely necessary, in the opinion of the officers and directors of the Exportadora, in order to maintain and increase the productive capacity of the sisal plantations in the States of Yucatan and Campeche, that the Exportadora make loans, in the amounts and at the times hereinafter referred to, to the planters of said States in order to enable them to conduct the operations of 80 planting, cultivating, cleaning, harvesting, and shipping the sisal produced on said plantations; and

Whereas to furnish the funds necessary to enable the Exportadora to make advances to the planters in the States of Yucatan and Campeche for the purposes aforesaid, the Exportadora has requested the Sales Corporation to loan to the Exportadora the sum of not exceeding $1,500,000 at the times and upon the terms hereinafter set forth:

Now, therefore, in consideration of the premises and of the sum of one dollar by each party to the other in hand paid, receipt whereof is hereby acknowledged, the parties hereto do hereby respectively covenant and agree each with the other as follows:

I. The Exportadora and the Sales Corporation respectively agree that the aforesaid agreement dated December 22, 1921, be and the same hereby is modified and amended so that the commission payable by the Exportadora to the Sales Corporation, as compensation for services of the Sales Corporation in selling, financing, attending to insurance, chartering, warehousing, and all other duties assumed by the Sales Corporation under the agreement dated December 22, 1921, shall be three per cent on the gross amount of all sisal sold or delivered on and after June 1, 1923, for account of the Exportadora; it being understood that after June 1, 1925, if and so long as the Exportadora shall have paid off all indebtedness of every nature of the Exportadora to the Sales Corporation, both principal and interest, then the rate of compensation payable by the Exportadora to the Sales Corporation under said contract dated December 22, 1921, as modified and amended as aforesaid, may be altered by 81 mutual agreement of the parties hereto, and it being further understood and agreed that said contract dated December 22, 1921, shall, except as specifically modified and amended as aforesaid, remain in full force and effect.

II. The Sales Corporation hereby agrees to loan to the exportadora the sum of not exceeding $1,500,000 United States currency to enable the exportadora to make loans to planters of sisal in the States of Yucatan and Campeche, Republic of Mexico, for the purposes hereinabove recited, upon the following terms and conditions,

to wit: Said sum of $1,500,000 will be advanced by the Sisal Sales Corporation to the exportadora in instalments as follows: Not exceeding $100,000 per month during each of the months of July, August, September, October, November, and December, 1923, and not exceeding $180,000 per month during each of the months of January, February, March, April, and May, 1924. In each case, simultaneously with the making of any such advance by the Sales Corporation to the exportadora, the exportadora will deliver to the Sales Corporation or its nominee a promissory note or notes of the exportadora, payable to the order of the Sisal Sales Corporation, bearing interest at the rate of eight per cent per annum, of an aggregate principal amount equal to the advances so made. $100,000 principal amount of said notes of the exportadora shall mature on the 15th day of each month commencing July 15, 1924, and ending September 15, 1925, and interest upon each of said notes shall be payable by the exportadora at the end of each month commencing July 31, 1923, and such notes shall be in the form of the draft of such notes hereto attached, marked "Exhibit A." Said notes
82 of the exportadora shall be secured by, and simultaneously with the delivery thereof there shall be deposited in pledge with the Sales Corporation or its nominee, as security therefor, notes in the form of the draft of such notes in the Spanish language hereto attached marked "Exhibit B," made by planters of sisal in the States of Yucatan and/or Campeche of the Republic of Mexico, of a principal amount at least equal to the principal amount of the notes of the exportadora thereby secured. Such notes of said planters shall constitute a first lien upon the plantations of such planters, respectively, and shall be endorsed or assigned by the Comision Exportadora to the Sales Corporation or its nominee.

It is understood and agreed that unless and until one of the events of default hereinafter referred to shall have occurred, the exportadora will be entitled to collect and receive interest upon all notes of planters pledged with the Sales Corporation as aforesaid, as and when the same shall become due and payable, provided, however, that in every case where the principal of any note of a planter pledged to secure a note of the exportadora as aforesaid shall mature and become payable prior to the maturity of the note of the exportadora as security for which the same is pledged, the exportadora, before collecting the principal of said planter's note, shall deliver to the Sales Corporation or its nominee other note or notes of planters of not less than an equal principal amount in substitution therefor, and that, in the event the exportadora shall fail to deliver to the Sales Corporation or its nominee other note or notes of planters of not less than an equal principal amount in substitution therefor before any planter's note shall have matured
83 and become payable the Sales Corporation may collect and receive the principal of and interest upon the said planter's note which has so matured and become payable, and may apply the principal so collected to the payment of the principal of the note of

the exportadora as security for which said planter's note which shall have matured and become payable shall have been pledged with the Sales Corporation.

III. The exportadora hereby agrees, upon the making of any advance to it by the Sales Corporation hereunder, to deliver to the Sales Corporation the note or notes of the exportadora secured by the pledge of a note or notes of a planter or planters of sisal in the States of Yucatan and/or Campeche in accordance with the terms of Paragraph II hereof.

IV. Upon failure of the exportadora to pay any indebtedness or liability of the exportadora to the Sales Corporation when the same shall become due, or upon failure of the exportadora duly and punctually to perform all of the obligations and agreements contained in the aforesaid agreement, dated December 22, 1921, or in this agreement on the part of the exportadora to be performed, or upon any proceedings being commenced to wind up or liquidate the affairs of the exportadora, or upon the transfer of all or any substantial part of the property of the exportadora to any other institution, each of which events is herein referred to as an event of default, then and in any such event all indebtedness and liabilities of the exportadora to the Sales Corporation shall, at the option of the Sales Corporation, become and be immediately due and payable, without demand or notice, notwithstanding any credit or time allowed to the exportadora by any instrument evidencing any of such indebtedness or liabilities, or otherwise, and the Sales
84 Corporation may forthwith take such action as it may deem proper to enforce, collect, and receive the principal of and interest upon all notes of planters pledged with it, as provided in this agreement, and apply the net amount so collected, as far as need be, toward the payment of any and all indebtedness and liabilities of the exportadora to the Sales Corporation, or the Sales Corporation may, in its discretion, immediately, without demand for payment, without advertisement, and without notice to the exportadora, sell all or any of said notes of planters pledged with the Sales Corporation as aforesaid, at private sale or at public auction or at broker's board or otherwise, at such times and places and for such prices and upon such terms and conditions as the Sales Corporation may deem proper, and may apply the proceeds of such sale or sales, as far as need be, towards the payment of any and all indebtedness or liabilities of the exportadora to the Sales Corporation, together with the expenses of such sale or sales, and interest, returning the overplus, if any, to the exportadora, which shall remain liable for any deficiency remaining unpaid after such application, with interest. If any such sale be at broker's board or at public auction the Sales Corporation may itself be a purchaser at such sale, free from any right to redemption of the exportadora, such right of redemption being hereby expressly waived and released.

In witness whereof Comision Exportadora de Yucatan, party of the first part, has caused its corporate name to be hereunto subscribed by Thomas Castellanos Acevedo, its attorney in fact thereunto duly authorized; and Sisal Sales Corporation, party of the second
85 part, has caused its corporate name to be hereunto subscribed by its president and its corporate seal to be hereunto affixed, attested by its secretary, in duplicate, the day and year first above written.

COMISION EXPORTADORA DE YUCATAN,
By TOMAS CASTELLANOS ACEVEDO,
Attorney in fact.

SISAL SALES CORPORATION,
By CHAS. D. ORTH,
President.

Attest:

A. E. SCHEITHE, *Secretary.*

Exhibit "A"—Form of note

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MERIDA, YUCATAN, ----------, 1923.

On the fifteenth day of ------------------, 192--, without grace, the undersigned Comision Exportadora de Yucatan, for value received, hereby promises to pay to Sisal Sales Corporation (hereinafter called the "Sales Corporation"), or order, at the banking office of The Equitable Trust Company of New York, No. 37 Wall Street, in the city and State of New York, in gold coin of the United States of America, of or equal to the present standard of weight and fineness, the sum of ------------------ dollars ($----------), with interest thereon from the date hereof at the rate of eight per cent (8%) per annum, payable monthly on the last day of each month, until said principal sum shall have been paid in full, having deposited herewith, as collateral security for the payment, per-
86 formance, and discharge of this and any and all other indebtedness or liabilities of the undersigned to the Sales Corporation or to the holder hereof, due or to become due, now or hereafter existing, direct or indirect, absolute or contingent, and whether such indebtedness or liabilities or any of them shall be in their nature contractual or tortious or arising by operation or law or in any other manner whatsoever, and whether at law or in equity, by statute or constitution, and whether or not the damages shall be liquidated or unliquidated, all of such indebtedness and liabilities being hereinafter referred to as "such liabilities," the following notes of planters of sisal in the States of Yucatan and/or Campeche, in the Republic of Mexico, to wit:

Unless and until one of the events of default hereinafter referred to shall have occurred, the undersigned will be entitled to collect and

receive interest upon all of the aforesaid notes of planters as and when the same shall become due and payable; provided, however, that in every case where the principal of any of said notes of planters shall mature and become payable prior to the maturity of this note, the undersigned, before collecting the principal of said planter's note, shall deliver to the Sales Corporation or the holder hereof or their respective nominees another note or notes of planters of not less than an equal principal amount in substitution therefor, and that in the event that the undersigned shall fail to deliver to the Sales Corporation or the holder of this note or their respective nominees another note or notes of planters of not less than an
87 equal principal amount in substitution for such planter's note pledged hereunder which is about to mature and become payable, the Sales Corporation or the holder hereof may collect and receive the principal of and interest upon the said planter's note pledged hereunder which has so matured and become payable, and may apply the principal so collected to the payment of the principal of this note. In the event that the maker of any planter's note pledged hereunder shall fail to pay the principal thereof at maturity, the undersigned will immediately deliver to the Sales Corporation or to the holder hereof or their respective nominees another note or notes of planters of not less than an equal principal amount in substitution therefor, or shall pay to the Sales Corporation or to the holder hereof a sum in cash equal to the amounts unpaid upon said planter's note, both principal and interest.

As security for the payment, performance, and discharge of any and all such liabilities, the Sales Corporation or the holder hereof is hereby given a lien upon any and all property of every name and nature whatsoever of the undersigned which now is or at any time hereafter may be in the possession of or in transit to the Sales Corporation or the holder hereof or of or to anyone for the Sales Corporation or the holder hereof, whether delivered or set in transit for safe-keeping or otherwise.

Upon the happening of any of the following events (herein referred to as "events of default"), to wit: Upon failure of the undersigned to pay, perform, or discharge any of such liabilities or any part thereof, or upon any proceedings being commenced to wind up or liquidate the affairs of the undersigned, or upon the transfer
88 of all or any substantial part of the property of the undersigned or any other institution, then all such liabilities shall, at the option of the Sales Corporation or the holder hereof, become and be immediately due and payable, without demand or notice, notwithstanding any credit or time allowed to the undersigned by any instrument evidencing any of such liabilities or otherwise, and the Sales Corporation or the holder hereof may forthwith take such action as they may respectively deem proper to enforce, collect, and receive the principal of and interest upon all notes of planters pledged hereunder, and may immediately or at any time thereafter,

without notice of the amount due or claimed to be due, without demand for payment, without advertisement, and without notice of sale, each and all of which is hereby expressly waived, sell the whole or any part of the notes of planters pledged hereunder and any other property securing any of such liabilities, including any negotiable instruments and/or choses in action, at private sale or at public auction or at broker's board or otherwise at such times and places and at such prices and upon such terms and conditions as the Sales Corporation or the holder hereof may deem proper, and apply the proceeds of any such collection, sale or sales, as far as need be, towards the payment of any or all of such liabilities, together with interest and the expenses of such collection, sale or sales, including attorneys' fees, returning the overplus, if any, to the undersigned, which shall remain liable for any deficiency remaining unpaid after such application, with interest. If any such sale be at broker's board or public auction the Sales Corporation or the holder hereof may be the purchaser at such sale, free from any right of redemption of the undersigned, such right or equity of redemption being hereby expressly waived and released. 89

It is agreed that upon any transfer of this note the Sales Corporation or any holder hereof may deliver any or all property securing this note or any part thereof to the transferee, who shall thereupon become vested with all the powers and rights herein conferred upon the Sales Corporation or upon the holder hereof in respect of this note and such property, and the Sales Corporation and all subsequent holders hereof up to the time of such transfer shall be thereafter forever relieved and fully discharged from any liability or responsibility in connection with such property so transferred.

It is understood and agreed that upon the payment of this note in full, both principal and interest, by the undersigned, this note, together with any and all notes of planters specifically pledged to secure the same, and any and all notes of planters pledged hereunder in substitution therefor, shall be returned to the undersigned.

COMISION EXPORTADORA DE YUCATAN,
By ----------------------------

Exhibit "B"—Form of note made by planters

For $------------------

(We) (I) owe and (we) (I) will pay at Merida, State of Yucatan, Mexico, on the---------day to the Comision Exportadora de Yucatan the sum of ----------------lawful money in United States currency, which (I) (we) have received to (our) (my) entire satisfaction in said United States currency, by the receipt and delivery whereof (we) (I) hereby waive articles 846 and 847 of the Civil Procedure of the State, which verbatim et literatim says: 90

"Article 846. There is stipulated hereby a period of two years during which action will lie for the securing of the return of an indebtedness or personal note, in which a person admits having received from another any sum or loan, at the end of which time he may be considered not to have received it. The two years will be reckoned from the date of the note."

"Article 847. Aside from the exception of the two years above recited, the burden of proof of delivery is upon the creditor; but if the debtor does not demand within two years that the creditor prove this, it is presumed to have been legally done, unless evidence is established to the contrary."

The said amount received of--------------------has been delivered in the form of a financing loan of investment in the costs of management, maintenance, and development of-------------------finca rûstica (city property or farm lands) called--------------------and must, therefore, be held to be a liability of priority, covered by article 1432, Section II, and article 1433 as revised and added to the State civil law, reading:

"Article 1432. From the amount of the mortgage on any piece of property payments shall be made in the following order: I. Costs of the judgment covered in article 1431. II. Costs of maintenance and management of the thing mortgaged, included therein being any advances of money from the Comision Exportadora de Yucatán and the Comisión Reguladora del Mercado de Henequen,
91 to the producers on account of their henequen produced
or any soever other classes of debts contracted with a view to financing contracted by the producer and credited to the said institutions, provided they are in keeping with the legitimate purposes of the said institutions. III. The costs of insuring the thing mortgaged. IV. Such contributions as are due by them during the last five years. V. Payments due the mortgagors as shown by the date of the respective signature, and in the payments shall be included interest for the last three years."

"Article 1433. The reason why the liabilities covered in cases I and II of the foregoing article must be paid in the order indicated is that they are essential requirements: The costs of maintenance and management must necessarily be met, and the costs of insurance are unalterable. That priority shall be given to the payment of advances by Comision Exportadora de Yucatan and by the Comision Reguladora del Mercado de Henequen, and to the debts for financing contracted by the producer in favor of the two institutions, covered in Section II of the foregoing article, it will be sufficient to produce the document in which the said obligations are set forth."

It is hereby fully stipulated and agreed that (I) (we) are bound to pay the Comision Exportadora de Yucatan the sum of-- exactly in current legal tender of the United States of America, to the exclusion of anysoever other kind of money, even though it be in full force and of current circulation.

It is further stipulated and agreed that in the event that (I) (we) shall transfer the said real estate, financed with the money with which this agreement deals, the Comision Exportadora de 92 Yucatan shall have the right to declare the terms of the credit matured, with the resultant power of demanding full payment of the loan which the present agreement transacts.

The principal amount of the indebtedness of ------------------ ---------------------- shall bear interest at the rate of ---------- per cent per annum, which (I) (we) will pay simultaneously with the said principal.

(I) (We) waive the privilege of (my) (our) domicile to which article 100, Section III, of the State Code of Civil Procedure refers, which reads:

"Article 100. Should there be any question as to the jurisdiction of the judgment, preference will be given by any judge in the following order. III. The court wherein is located the domicile of the debtor; if there be more than one, then the court which the maker of the note chooses."

In other words, (I) (we) hereby submit to the duly legalized Justices of the Judicial Department of Merida, in all matters covered by the herewith agreement, being also liable for the payment of costs, damages, and fees which delay in payment, shall make necessary and the judicial and other than judicial procedures which the creditor may have considered it proper to engage in for the collection of the credit.

MERIDA, YUCATAN, --------------------------------

This credit with all its rights and actions has been granted and removed to the named corporation "Sisal Sales Corporation," constituted according to the laws of the State of Delaware, United States of America, as security and warrant of duties contracted to its favor by the "Comision Exportadora de Yucatan" and in this effi- 93 cacy this document is submitted to the said "Sisal Sales Corporation" who remains authorized to collect and receive directly the amount of the granted credit, as well as to alienate and transfer the same credit, in order to apply at the fulfillment of the said duties, according to the stipulations of the same. Present the debtor Mr. -- hereby evidences that he has been informed and acknowledges this cession in accordance of the terms of same and allows that the transferee corporation can directly demand and receive the granted credited amount to alienate and transfer the said credit. The "Comision Exportadora de Yucatan" as much as the debtor Mr. ------------ -------------------------- they expressly surrender their rights to whatever amount of this credit could not be collected nor received by the transferee Corporation and also surrender the article 1326 of the Civil Code of Yucatan to whom they grant that right which reads as follows: "Article 1326. The creditor to whom this has been given in security a title of credit has not the right tho when the term is due of the credit pledged to collect nor receive it although it is wilfully offered by the debtor. * * *"

And as witness, the following have affixed their signatures, at Merida.

94 **In United States District Court**

[Title omitted.]

Motion to dismiss

Filed Sept. 26, 1924

To the judges of the District Court of the United States for the Southern District of New York:

The defendants, Sisal Sales Corporation, Frederick T. Walker, Lynn H. Dinkins, F. W. Black, J. A. Beatson, the Equitable Trust Company of New York, the Royal Bank of Canada, and Interstate Trust & Banking Company, move to dismiss the petition herein and the whole thereof for the reasons and upon the grounds hereinafter set forth:

I. The petition herein does not state facts sufficient to constitute a valid cause of action in equity against these defendants or any of them.

II. It appears on the face of the petition herein that said petition is wholly without equity.

95 III. It appears on the face of the petition herein that it is impossible to adjudicate or make any judgment or decree in this action, except a judgment or decree dismissing the petition herein, without examining, inquiring into, and investigating the laws, proclamations, and decrees of independent and sovereign foreign States, to wit, the Republic of the United States of Mexico and the State of Yucatan, and without investigating, examining, inquiring into, passing upon, and judging the lawfulness, validity, or legality of said laws, proclamations, and decrees, and of acts done by or under the authority of such sovereign and independent States and the laws, proclamations, and decrees thereof.

Wherefore, and for other good reasons of objection appearing on the face of the petition, these defendants respectfully pray that the petition of the United States of America herein be dismissed with costs.

Murray, Aldrich & Roberts,
Solicitors for the Defendants, Sisal Sales Corporation, Frederick T. Walker, Lynn H. Dinkins, F. W. Black, J. A. Beatson, The Equitable Trust Company of New York, The Royal Bank of Canada and Interstate Trust & Banking Company.
37 Wall Street, New York, N. Y.

[File endorsement omitted.]

96 In United States District Court

[Title omitted.]

Motion of defendants, Charles D. Orth, et al., to dismiss

Filed Sept. 26, 1924

To the judges of the District Court of the United States for the Southern District of New York:

The defendants, Charles D Orth, Michael J. Smith, Charles D. Orth, jr., and Hanson & Orth, move to dismiss the petition herein, and the whole thereof, for the reasons and upon the grounds hereinafter set forth:

I. The petition herein does not state facts sufficient to constitute a valid cause of action in equity against these defendant or any of them.

II. It appears on the face of the petition herein that said petition is wholly without equity.

III. It appears on the face of the petition herein that it is impossible to adjudicate or make any judgment or decree in this action, except a judgment or decree dismissing the petition herein, without
examining, inquiring into and investigating the laws, procla-
97 mation, and decrees of independent and sovereign foreign
States, to wit, the Republic of the United States of Mexico and the State of Yucanta, and without investigating, examining, inquiring into, passing upon and judging the lawfulness, validity or legality of said laws, proclamations, and decrees, and of acts done by or under the authority of such sovereign and independent States and the laws, proclamations, and decrees thereof.

Wherefore, and for other good reasons of objection appearing on the face of the petition, these defendants respectfully pray that the petition of the United States of America herein be dismissed with costs.

Dated, New York, N. Y., September 26th, 1924.

Medina & Sherpick,
Solicitors for the Defendants, Charles D. Orth, Michael J. Smith, Charles D. Orth, jr., and Hanson & Orth.

Office and post office address: 165 Broadway, Borough of Manhattan, City of New York, N. Y.

Harold B. Medina,
Of counsel.

[File endorsement omitted.]

98 In United States District Court

[Title omitted.]

Opinion

Filed June 4, 1925

Emory R. Buckner, United States attorney, for complainant. A. F. Myers, David A. L'Esperance, and Miller Hughes, special assistants to the Attorney General, counsel.

Murray, Aldrich & Roberts, solicitors for defendant, Sisal Sales Corporation, Frederick T. Walker, Lynn H. Dinkins, F. W. Black, J. A. Beatson, the Equitable Trust Company of New York, the Royal Bank of Canada, Interstate Trust and Banking Company, and Comision Exportadora de Yucatan; Winthrop W. Aldrich and Francis T. Christy, counsel.

Medina & Sherpick, attorneys for Hanson & Orth, Charles D. Orth, Michael J. Smith, and Charles D. Orth, jr.; Harold R. Medina, counsel.

Augustus N. HAND, district judge: This is a suit to restrain an alleged conspiracy by the defendants in violation of the Sherman Antitrust Act and the Wilson Act.

99 The conspiracy relied upon was to monopolize the export market to the United States in sisal, a product of Yucatan, extensively used for binder twine for agricultural purposes. It is unnecessary to determine whether an unlawful conspiracy was once formed. The original purpose of the agreements and transactions pleaded by the Government with which most of the parties defendant were connected was to enable the defendant banks to dispose of large quantities of sisal on which they had advanced money after the war. The complaint alleges that those stocks were disposed of some years ago.

It is assumed that the defendants planned to advocate and obtained legislation in Yucatan giving the Comision Exportadora a monopoly and that the Eric Corporation which held the surplus stocks of the banks pooled its sisal with that of the Yucatan monopolistic corporation. These stocks were long ago disposed of and we have nothing left but the Comision Exportadora, and its selling agent in America, the Sisal Sales Corporation, to which the various defendant banks are lending money in aid of their financial operations.

The question is whether the defendants now should be restrained from dealing with the Sisal Sales Corporation and its principal, Comision Exportadora de Yucatan, because the latter is a monopoly created by the Government of Yucatan and protected by such favorable and discriminatory tax laws of that State that it is enabled to control the American market and fix prices in sisal. I think 100 it manifest from the decision of the Supreme Court in American Banana Co. *v.* United Fruit Company, 213 U. S. 347, that an agreement to procure monopolistic legislation in another country cannot be treated as unlawful by our courts. The Government attempts to draw a distinction between the American Banana case because that was an action by an individual to recover treble damages for injuries arising out of a conspiracy to monopolize the banana trade. One of the wrongful acts consisted of a seizure by the Costa Rica Government of a banana plantation belonging to the American Banana Company, at the alleged instigation of the defendant United Fruit Company. The Supreme Court held the cause of action invalid and said "a conspiracy in this country to do acts in another jurisdiction does not draw to itself those acts and make them unlawful, if they are permitted by the local law."

If acts "permitted by the local law" could not be inquired into for the purpose of awarding damages to a person injured, I do not follow the reasoning which regards them as a basis for a suit by the Government to restrain the parties connected with them as conspirators. It is true enough that an act, in itself innocent, may be a step in carrying out an unlawful conspiracy, but when, as here, 101 nothing remains of the conspiracy that is not dependent upon the claimed unlawfulness of such act the whole case must fall.

An injunction to restrain dealings with the Comision Exportadora de Yucatan and the Sisal Sales Corporation would be quite futile, so far as the public interest in concerned. Anyone else could surely deal with them and the successors to the alleged unlawful conspirators would have to be at once treated as legitimate traders and go scatheless.

The motion to dismiss is granted.

A. N. H., *D. J.*

June 4, 1925.

[File endorsement omitted.]

102 In United States District Court

[Title omitted.]

Notice of proposed order

Sir: Please take notice that a proposed order, of which the within is a true copy, will be presented for settlement and entry herein to Mr Augustus N. Hand at his chambers in this court, at the Woolworth Building, in the Borough of Manhattan, City of New York, on the 25th day of June, 1925, at 11 o'clock in the forenoon.

Dated: New York, June 17th, 1925.

Yours, etc.,

Murray, Aldrich & Roberts,
Attorneys for Defendants, Sisal Sales Corporation, Frederick T. Walker, Alvin W. Krech, J. A. Beatson, Lynn H. Dinkins, F. W. Black, The Equitable Trust Company of New York, The Royal Bank of Canada, Interstate Trust and Banking Company, Comision Exportadora de Yucatan, and Tomas Castellanos Acevedo.
37 Wall Street, Borough of Manhattan, New York, N. Y.

Medina & Sherpick,
Attorneys for Defendants, Hanson & Orth, Charles D. Orth, Michael J. Smith, and Charles D. Orth, Jr.
165 Broadway, Borough of Manhattan, New York, N. Y.

To: Hon. Emory R. Buckner, Post Office Building, New York, N. Y.

103 **In United States District Court**

[Title omitted.]

Order dismissing petition

Filed June 30, 1925

Motions having been made herein by defendants, Hanson & Orth, Charles D. Orth, Michael J. Smith, and Charles D. Orth, jr., by their attorneys, Medina & Sherpick, and by defendants, Sisal Sales Corporation, Frederick T. Walker, Alvin W. Krech, Lynn H. Dinkins, F. W. Black, J. A. Beatson, the Equitable Trust Company of New York, the Royal Bank of Canada, Interstate Trust and Banking Company, Comision Exportadora de Yucatan, and Tomas Castellanos Acevedo, by their attorneys, Muray, Aldrich & Roberts, to dismiss the petition herein upon the ground that it does not state facts sufficient to constitute a cause of action against said defendants, or any of them and on other grounds.

104 Now on reading and filing the notice of motion for defendants Hanson & Orth, Charles D. Orth, Michael J. Smith, and Charles D. Orth, jr., and the notice of motion for defendants Sisal Sales Corporation, Frederick T. Walker, Lynn H. Dinkins, F. W. Black, J. A. Beatson, The Equitable Trust Company of New York, The Royal Bank of Canada, Interstate Trust and Banking Company, and Comision Exportadora de Yucatan, dated September 26, 1924, read in support of said motions, and the name of the defendant Alvin W. Krech having been considered as incorporated therein, said Alvin W. Krech being considered as one of the defendants on whose behalf the motion to dismiss the petition was argued, with the same force and effect as though said notice of motion had originally been served on his behalf, and the defendant Tomas Castellanos Acevedo having been permitted in open court to join in said motion, with the same force and effect as though said notice of motion had also originally been served on his behalf, and after hearing Winthrop W. Aldrich and Harold R. Medina, of counsel for the said defendants, respectively, in support of the said motion, and after hearing A. F. Myers, special assistant to the Attorney General in opposition thereto, and due deliberation having been had thereon and a decision rendered therein, and on filing the opinion of the court, it is hereby

Ordered that the said motion be, and the same hereby is, in all respects granted and the said petition herein is hereby dismissed.

Augustus N. Hand,
United States District Judge.

[File endorsement omitted.]

105 In United States District Court

[Title omitted.]

Notice of designation of parts of record to be printed

Filed July 24, 1925

Sirs: Please take notice that the appellant designates the following as the portions of the record in this cause to be incorporated into the transcript on its appeal:

1. Original petition, filed July 24, 1924.

2. All motions, notices of motions, and orders filed or entered, including:

(a) Notice of motion of defendants, Hanson & Orth, Charles D. Orth, Michael J. Smith and Charles D. Orth, jr., dated September 26, 1924, to dismiss the petition.

(b) Motion of defendants, Hanson & Orth, Charles D. Orth, Michael J. Smith and Charles D. Orth, jr., filed September 26, 1924, to dismiss the petition.

(c) Notice of motion of defendants, Sisal Sales Corporation, 106 Frederick T. Walker, Lynn H. Dinkins, F. W. Black, J. A. Beatson, the Equitable Trust Company of New York, the Royal Bank of Canada and Interstate Trust and Banking Company, dated September 26, 1924, to dismiss the petition.

(d) Motion of defendants, Sisal Sales Corporation, Frederick T. Walker, Lynn H. Dinkins, F. W. Black, J. A. Beatson, the Equitable Trust Company of New York, the Royal Bank of Canada and Interstate Trust and Banking Company, filed September 26, 1924, to dismiss the petition.

(e) Subsequent orders joining the defendants Comision Exportadora de Yucatan, Alvin W. Krech and Tomas Castellanos Acevedo in the aforesaid notice of motion and motion of defendants Sisal Sales Corporation, *Corporation* Frederick T. Walker, Lynn H. Dinkins, F. W. Black, J. A. Beatson, The Equitable Trust Company of New York, the Royal Bank of Canada and Interstate Trust and Banking Company to dismiss the petition.

3. Opinion of the Honorable Augustus N. Hand, United States district judge, dated June 4, 1925.

4. Final decree, entered June 25, 1925, granting the defendants' motions to dismiss and dismissing the petition.

5. Petition for appeal.

6. Assignment of errors.

7. Order allowing appeal.

8. Citation.

Dated: New York, July 24, 1925.

Yours, etc.

Emory R. Buckner,
United States Attorney.

William J. Donovan,
Assistant to the Attorney General.

107 MILLER HUGHES,
Special Assistant to the Attorney General.

To:

Murray, Aldrich & Roberts, 37 Wall St., Borough of Manhattan, New York, N. Y., counsel for defendants, Sisal Sales Corporation, Frederick T. Walker, Alvin W. Krech, Lynn H. Dinkins, F. W. Black, J. A. Beatson, the Equitable Trust Company of New York, the Royal Bank of Canada, Interstate Trust and Banking Company, Comision Exportadora de Yucatan and Tomas Castellanos Acevedo.

Medina & Sherpick, 165 Broadway, Borough of Manhattan, New York, N. Y., counsel for defendants, Hanson & Orth, Charles D. Orth, Michael J. Smith, and Charles D. Orth, jr.

And to the clerk of the District Court of the United States for the Southern District of New York.

108 Service of the within praecipe is hereby acknowledged this 24th day of July, A. D. 1925.

MURRAY, ALDRICH & ROBERTS,
37 Wall St., Borough of Manhattan, New York, N. Y., counsel for defendants, Sisal Sales Corporation, Frederick T. Walker, Alvin W. Krech, Lynn H. Dinkins, F. W. Black, J. A. Beatson, the Equitable Trust Company of New York, the Royal Bank of Canada, Interstate Trust and Banking Company, Comision Exportadora de Yucatan, and Tomas Castellanos Acevedo.

MEDINA AND SHERPICK,
165 Broadway, Borough of Manhattan, New York, N. Y., counsel for defendants, Hanson and Orth, Charles D. Orth, Michael J. Smith and Charles D. Orth, jr.

[File endorsement omitted.]

109 In United States District Court

[Title omitted.]

Petition for appeal

Filed July 24, 1925

The United States of America, petitioner, feeling itself aggrieved by the final decree granting the motions of the defendants to dismiss and dismissing the petition in the above-entitled cause, entered on the 25th day of June, 1925, by its counsel prays an appeal therefrom to the Supreme Court of the United States.

The particulars wherein the United States of America considers said order erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

The United States further prays that a transcript of the record, proceedings, and papers upon which said order was made and entered, duly authenticated, may be transmitted at the earliest
110 practicable date to the Supreme Court of the United States.

EMORY R. BUCKNER,
United States Attorney.

JOHN G. SARGENT,
Attorney General.
WILLIAM J. DONOVAN,
Assistant to the Attorney General.
MILLER HUGHES,
Special Assistant to the Attorney General.

[File indorsement omitted.]

111 In United States District Court

[Title omitted.]

Order allowing appeal

Filed July 24, 1925

Be it remembered that in the above-entitled cause, on the 24th day of July, 1925, the United States of America, appearing by counsel, presented and caused to be filed its petition praying an appeal to the Supreme Court of the United States from the final decree entered therein on the 25th day of June, 1925, granting the motions of the defendants to dismiss and dismissing the petition, and at the same time presented and caused to be filed its assignment of errors, all as required by the statutes and rules of the court. On consideration thereof it is hereby ordered that said appeal as prayed be, and is hereby, allowed; and the clerk of this court is hereby directed to transmit a duly authenticated transcript of the record, papers and proceedings in said cause to the Supreme Court of the United States at the earliest practicable date.

AUGUSTUS N. HAND,
District Judge.

[File endorsement omitted.]

112 [Citation in usual form showing service on Murray, Aldrich & Roberts, filed July 24, 1925, omitted in printing.]

114 In United States District Court

[Title omitted.]

Assignments of error

Filed July 24, 1925

Comes now the United States of America, petitioner, by its counsel, and, in connection with its application for appeal, files the following assignment of errors upon which it will rely in its appeal to the Supreme Court of the United States from the final decree of the District Court entered June 25, 1925, granting the motions of the defendants to dismiss and dismissing the petition in the above entitled cause.

The District Court erred:

In failing to hold that the petition sufficiently alleges that the defendants are engaged in a combination and conspiracy in restraint of the interstate and foreign trade and commerce of the United
115 States in sisal and in a combination and conspiracy to increase the marked price of sisal in the United States and are monopolizing such trade and commerce, and that such combination and conspiracy was entered into and is largely operating in the United States and within the jurisdiction of the court; and in failing to hold that the combination, conspiracy, and monopoly alleged in the petition is in violation of the act of July 2, 1890, commonly known as the Sherman Antitrust Act, and also in violation of Section 73 of the act of August 27, 1894, as amended by the act of February 12, 1913, commonly known as the Wilson Tariff Act.

II

In holding that "the original purpose of the agreements and transactions pleaded by the Government with which most of the parties defendant were connected was to enable the defendant banks to dispose of large quantities of sisal on which they had advanced money after the war," and that, as the stocks of sisal stored in the United States and in Yucatan and pooled by the defendants in furtherance of the alleged unlawful combination, conspiracy, and monopoly were disposed of before the suit was filed, there was nothing being done by the defendants at the time the suit was filed against which the court could enter a decree.

III

In failing to hold that under the allegations of the petition the original purpose of the combination and conspiracy, and the effect of same, was to restrain and monopolize the interstate and foreign trade and commerce of the United States in sisal, including
116 all sisal whether fresh or stored, and to increase its marked price in the United States, that such combination and conspiracy continuously operated and was in existence at the time the petition was filed, that the pooling of the stocks of stored sisal at various times were simply among the overt acts committed in the United States in furtherance of such combination and conspiracy.

IV

In failing to hold that while it appears from the petition that the stored sisal pooled by the defendants in furtherance of the conspiracy has all been finally sold to the manufacturers, it also appears from the petition that the defendants are still engaged in the combination and conspiracy originally entered into and that the contracts, agreements, and relations now existing between them had their inception in, are pursuant to, and in continuation of the original unlawful combination and conspiracy to restrain and monopolize the interstate and foreign trade and commerce of the United States in sisal and to increase the market price of sisal in the United States, and in failing to hold that it would be the duty of the court, if the allegations of the petition are true, to restrain the further carrying out of the contracts and agreements now existing between the defendants.

V

In holding that the Government's case now rests wholly upon the unlawfulness of a conspiracy among the defendants to secure the enactment of certain laws by the foreign and sovereign State of Yucatan to effect a monopoly in the purchase of sisal in
117 Yucatan and thereby control the American market and fix
prices, and that the court could not enter a decree against the defendants without inquiring into and passing judgment on the validity of such laws.

VI

In failing to hold that the Government's case rests substantially upon the proposition that the antitrust laws, particularly Section 73 of the Wilson Tariff Act, prohibit persons or corporations of the United States or parties doing business in the United States from engaging in a combination and conspiracy with a foreign corporation or persons located in a foreign country where the purpose and effect is either to monopolize the importation of an article from a foreign country into the United States or to increase the market price in the United States of such imported article; and in failing to hold that the petition charges the Sisal Sales Corporation and those affiliated with it with being engaged in such an unlawful combination and conspiracy with the Comision Exportadora de Yucatan, both as to monopolizing the importation of sisal from Yucatan into the United States and of increasing its market price in the United States, and in failing to hold that if the allegations of the petition should be established, it would be the duty of the court to restrain the Sisal Sales Corporation and its affiliated interests from further participating in the existing combination with the Comision Exportadora de Yucatan and from engaging in a similar combination in the future.

VII

In failing to hold that it appears from the petition that
118 such acts of the conspirators as were committed in Yucatan

constitute only a part of the history of the unlawful conspiracy formed within the United States and within the jurisdiction of the court, and that, while the acts committed in Yucatan contribute, those committed in the United States also materially contribute to a restraint in and monopoly of the trade and commerce of the United States in sisal and the increase of the market price of sisal in the United States, and in failing to hold that if the allegations of the petition are established it would be the duty of the court to restrain such acts as are now being committed in the United States in furtherance of the combination, conspiracy, and monopoly alleged in the petition.

VIII

In holding that "the question is whether the defendants now should be restrained from dealing with the Sisal Sales Corporation and its principal, Comision Exportadora de Yucatan, because the latter is a monopoly created by the Government of Yucatan and protected by such favorable and discriminatory tax laws of that State that it is enabled to control the American market and fix prices"; and in holding that "an injunction to restrain dealings with the Comision Exportadora de Yucatan and the Sisal Sales Corporation would be quite futile, so far as the public interest is concerned," on the theory that "anyone else could surely deal with them and the successors to the alleged unlawful conspirators would have to be at once treated as legitimate traders and go scatheless."

IX

In failing to hold that it appears from the petition that
119 under the contracts and relationship between the Sisal Sales
Corporation and the Comision Exportadora de Yucatan the former supplies from the United States the money with which the latter purchases sisal in Yucatan for exportaation to the United States and acts as its exclusive agent in the sale of same in the United States, that the Sisal Sales Corporation gives the Comision Exportadora de Yucatan the financial backing and credit necessary to a restraint of competition in and a monopolization of the sisal trade of the United States and the increase and arbitrary control of the price of sisal in the United States, that the contracts and agreements between the Sisal Sales Corporation and the Comision Exportadora de Yucatan were entered into for the purpose of restraining competition and effecting a monopoly in the importation of sisal into the United States and its sale therein and for the purpose of increasing its market price in the United States, and that without the participation of the Sisal Sales Corporation and its affiliated interests in the alleged combination and conspiracy the monopoly in the importation of sisal into and its sale in the United States could not have

been effected or now be maintained nor could the market price in the United States have been increased or now be arbitrarily controlled, and in failing to hold that if the allegations of the petition are established it would be the duty of the court to restrain the Sisal Sales Corporation and its affiliated interests from further participating in the alleged combination and conspiracy and from engaging in a similar combination or conspiracy in the future.

X

In failing to hold that the petition prays not merely for "an injunction to restrain dealings with the Comision Exporta-
120 dora de Yucatan and the Sisal Sales Corporation" but for an injunction to restrain the further carrying out of the contracts between the Comision Exportadora de Yucatan and the Sisal Sales Corporation and for a severance of the relationship and a breaking of the combinations between them, and in failing to hold that if the facts alleged in the petition are established such injunction should be granted.

XI

In failing to hold that the financial backing of the Comision Exportadora de Yucatan by the Sisal Sales Corporation, as provided for in the contracts alleged in the petition to exist between them, is one of the overt acts being continuously committed in the United States in furtherance of the alleged combination and conspiracy by a conscious participant in and beneficiary of same, and that the financial support of and other connection with the Yucatan corporation on the part of the American defendants and what is done in the United States are material factors in monopolizing the importation of sisal into the United States and in giving the combination its force and power to arbitrarily raise and control the price of sisal to the American consuming public, and thus subject, if the allegations of the petition are true, to injunction.

XII

In failing to hold that while the court may not always compel a free and open market in the purchase of sisal within the State of Yucatan, the court does have the power, when the sisal produced in Yucatan enters into and becomes an article of the foreign trade and commerce of the United States, to restrain the doing of any act in the United States, or to restrain any defendant against
121 whom a decree of the court can be enforced from further carrying out any contract or agreement. In furtherance of the alleged combination and conspiracy to restrain and monopolize the importation of sisal into the United States and its sale therein or to increase its market price to the consuming public therein.

XIII

In failing to hold that the court would have the power and duty under the antitrust laws and particularly under the antitrust provisions of the Wilson Tariff Act, if the allegations of the petition are true, to restrain the Sisal Sales Corporation and the Comision Exportadora de Yucatan from further carrying out the contracts and agreements alleged in the petition to exist between them, under which every pound of sisal imported into the United States is controlled and sold among the several States by the combination and under which the combination is given its force and power to exact from the American consumers arbitrary and unreasonable prices for same, and that it would be the duty of the court to restrain all of the defendants from entering into similar contracts and agreements or a similar combination and conspiracy in the future.

XIV

In failing to hold that the petition states facts sufficient to constitute a valid cause of action in equity against the defendants to which they should answer.

122

XV

In granting the defendants' motions to dismiss and in dismissing the petition.

Emory R. Buckner,
United States Attorney.

William J. Donovan,
Assistant to the Attorney General.
Miller Hughes,
Special Assistant to the Attorney General.

[File endorsement omitted.]

123 [Clerk's certificate to foregoing transcript omitted in printing.]

124 In Supreme Court of the United States

Statement of points to be relied upon and designation by appellant to print the entire record

Filed Sept. 8, 1925

Now comes the appellant, the United States of America, by its Solicitor General, and states that it intends to rely on the points set forth in the assignment of errors.

The appellant designates as necessary to the consideration of the points set forth in the assignment of errors the entire record as sent up from the court below and filed.

William J. Donovan,
Acting Solicitor General.

Service of the within appellant's statement of points and designation of record is hereby acknowledged this 4th day of September, A. D. 1925.

MURRAY, ALDRICH & ROBERTS,
37 Wall St., Borough of Manhattan, New York, N. Y., counsel for appellees, Sisal Sales Corporation, Frederick T. Walker, Alvin W. Krech, Lynn H. Dinkins, F. W. Black, J. A. Beatson, the Equitable Trust Company of New York, the Royal Bank of Canada, Interstate Trust and Banking Company, Comision Exportadora de Yucatan and Tomas Castellanos Acevedo.

MEDINA & SHERPICK,
165 Broadway, Borough of Manhattan, New York, N. Y., counsel for appellees, Hanson and Orth, Charles D. Orth, Michael J. Smith, and Charles D. Orth, Jr.

[File endorsement omitted.]

(Indorsed on cover:) File No. 31415. S. New York D. C. U. S. Term No. 200. The United States of America, appellant, *vs.* Sisal Sales Corporation, Charles D. Orth, Alvin W. Krech et al. Filed August 21st, 1925. File No. 31415.

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Sherman Antitrust Act (Act of July 2, 1890, c. 647, 26 Stat. 209):	
Sec. 1	3, 29, 30
Sec. 2	3
Sec. 4	3
Sec. 7	20
Wilson Tariff Act (Act of August 27, 1894, c. 349, 28 Stat. 509, 570, as amended by the Act of February 12, 1913, c. 40, 37 Stat. 667):	
Sec. 73	3, 30
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Act of February 11, 1903, c. 544, 32 Stat. 823, as amended June 25, 1910, c. 428, 36 Stat. 854	2
Judicial Code, Sec. 238, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938	2

In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 200

THE UNITED STATES OF AMERICA, APPELLANT
v.
SISAL SALES CORPORATION ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES

PREVIOUS OPINION IN THE PRESENT CASE

The opinion of the court below appears on page 52 of the Record.

GROUNDS OF JURISDICTION

The final decree in the District Court, dismissing the Government's petition, was entered June 30, 1925. (R. 55.) On July 24, 1925, the Government petitioned for and was allowed an appeal to this Court (R. 57, 58) under authority of the Act of February 11, 1903, c. 544, 32 Stat. 823, as amended June 25, 1910, c. 428, 36 Stat. 854, commonly known as the Expediting Act, left in force by section 238 of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938.

QUESTION PRESENTED

Whether it is a violation of the Sherman and Wilson Antitrust statutes for a group of bankers to conspire in this country to monopolize the importation of a basic product from a foreign country in which over 80 per cent of that product is produced, and to carry such conspiracy into effect and actually enhance prices, by the following means:

> (*a*) Organizing and financing a corporation in the foreign country as an exclusive purchaser of the product, with power to fix the price and withhold the product at will from the market;
>
> (*b*) Turning over to that corporation the existing stocks in the hands of the subsidiaries of the defendants, so as to form an exclusive pool;
>
> (*c*) Obtaining for that corporation from a foreign local government a discriminatory tax effective to produce a monopoly;
>
> (*d*) Organizing a single corporate selling agency in the United States, with power to fix prices and impose terms, such as—
>
> (1) Requiring every American purchaser of the product to take a portion of the stored product together with the new product.
>
> (2) Securing exclusive use of chief transportation facilities from Yucatan, point of almost sole production.

STATUTES INVOLVED

Sherman Antitrust Act (Act of July 2, 1890, c. 647, 26 Stat. 209):

> SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. * * *
>
> SECTION 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor * * *.
>
> SECTION 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. * * *

Wilson Tariff Act (Act of August 27, 1894, c. 349, 28 Stat. 509, 570, as amended by the Act of February 12, 1913, c. 40, 37 Stat. 667):

> SECTION 73. That every combination, conspiracy, trust, agreement, or contract is

> hereby declared to be contrary to public policy, illegal, and void when the same is made by or between two or more persons or corporations either of whom, as agent or principal, is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. * * *
>
> SECTION 74. That the several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of section seventy-three of this Act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petitions setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. * * *

STATEMENT OF THE CASE

The case comes to this Court on appeal from an order of the District Court for the Southern District of New York dismissing the petition. This order was entered June 30, 1925.

The gist of the petition is the charge that in 1921 the defendants entered into a conspiracy in the United States to monopolize the importation and sale in the United States of sisal—a fiber obtained from the henequen plant and used in the manufacture of binder twine.

A specific intent to increase prices in this country is charged.

The plan is alleged to have been based upon a similar plan, to which certain of the defendants were parties, in operation and effect a few years before, and which had been abandoned only after the institution of antitrust proceedings.

The means alleged were the formation of two corporations, one in Mexico (Comision Exportadora de Yucatan) for purchasing—the other in the United States (Sisal Sales Corporation) for selling.

In order to make the plan effective, it was alleged that the defendant banks would turn over to the purchasing corporation all stocks of sisal in the possession or under the control of the defendants, and that the defendants by the manipulation and reduction of prices would frighten the state government of Yucatan into enacting discriminatory legislation for the protection of the monopoly in sisal obtained by the defendants.

The petition charged the actual execution and operation of the plan at the date of the filing of the petition (R. 21) and a specific increase of prices resulting from the arrangement. The District

Court dismissed the petition upon the grounds that the basis of the suit by the Government was an agreement to obtain monopolistic legislation in another country, and the claimed unlawfulness of such acts.

The court below said (R. 54):

> An injunction to restrain dealings with the Comision Exportadora de Yucatan and the Sisal Sales Corporation would be quite futile, so far as the public interest is concerned. Anyone else could surely deal with them and the successors to the alleged unlawful conspirators would have to be at once treated as legitimate traders and go scatheless.

DEFENDANTS

The defendants in large part are citizens and corporations of and doing business in the United States.

The corporate defendants are the following:

(*a*) The Sisal Sales Corporation, a Delaware corporation engaged in the importation and sale of sisal, and having an office in New York City (hereinafter called the Sisal Corporation).

(*b*) The Equitable Trust Company, a New York banking corporation.

(*c*) Interstate Trust & Banking Company, a Louisiana banking corporation doing business in the city of New Orleans.

(*d*) The Eric Corporation, a Delaware corporation engaged in the importation of sisal from Mexico, and its sale in the United States. It obtained its name from the first letters of each of four banks in the United States (E—Equitable Trust Company of New York, r—Royal Bank of Canada, i—Interstate Trust & Banking Company, c—Continental & Commercial National Bank of Chicago) and was organized as a selling agency by these banks to take over the sisal held by them as security for unpaid loans.

(*e*) Comision Exportadora de Yucatan, a Mexican corporation doing business in the state of Yucatan and exporting sisal to the United States (hereinafter called the Yucatan Company).

(*f*) The Royal Bank of Canada, a Canadian bank doing a banking business in the city of New York.

(*g*) Hanson and Orth, a partnership composed of defendants Charles D. Orth, Michael J. Smith, and Charles D. Orth, Jr., engaged in the sisal brokerage business in New York City and acting as general managers of the Sisal Sales and Eric Corporation.

The other individual defendants are officers or representatives of the above-named corporations. (R. 1, 2.)

THE PETITION

The petition alleges the following:

That for a period of twenty years or more Mexican sisal has been able to fill the requirements of the binder twine manufacturers in the United States. That Mexico is the only country in which sisal is produced in sufficient quantities to supply the needs of this country and practically the entire output of that country is grown in the state of Yucatan, there being a small quantity produced in the state of Campeche. More than 80 per cent of the binder twine used in the United States is made of sisal. There is no efficient substitute for binder twine in the operation of the grain harvesting machinery, and without it the successful harvest of cereal crops on the present scale of production would be impossible. (R. 3, 4.)

Prior to 1915 sisal was sold to manufacturers of binder twine in the United States under conditions of competition. (R. 4.) In that year it was arranged that a corporation in Yucatan known as the Comision Reguladora would buy all Mexican sisal and import it into the United States, and under the direction of defendant Dinkins a company known as the Pan American Commission Corporation was organized in the United States, which had for its purpose the financing of the Reguladora Company and to carry out the purpose of withholding sisal from the United States market as long as necessary to enable it to be sold at increased prices. (R. 4, 5.)

As a result of the above arrangement the parties to the combination obtained a complete monopoly in the trade and commerce in sisal between the United States and Mexico and were able to fix arbitrarily the price of sisal in the United States. In 1917 an antitrust suit was instituted against this concern, but was dismissed because the Mexican interests, no longer requiring the services of the Pan American Commission Corporation in the borrowing of money, repudiated the 1915 contract. (R. 7.)

Until August, 1919, the Comision Reguladora, practically the only distributor of Mexican sisal, frequently borrowed large sums of money from the banks in the United States, most of this money being furnished by the Equitable Trust Company of New York, the Royal Bank of Canada, and the Interstate Trust & Banking Corporation of New Orleans. As a result of its transactions with the banks there had been accumulated in the United States a surplus of about 400,000 bales of sisal, which was pledged to the banks. (R. 7, 8.) In the latter part of 1919 the price of sisal declined. The interested banks refused further advances and the Comision Reguladora then collapsed. The banks foreclosed on the sisal stored in the United States, and in order to dispose of it they organized the defendant Eric Corporation as a selling agency, which then became the dominant factor in Mexican sisal. (R. 8, 9.)

After the financial collapse of the Comision Reguladora in 1919 an open market prevailed in Yucatan, independent buyers were able to purchase fresh sisal as low as the Eric Corporation could afford to sell the sisal stored in the United States; fresh sisal was more in demand than the stored sisal; stored sisal was unfavorably regarded because of rumored deterioration. (R. 10.)

In January, 1921, in order to aid the defendant Eric Corporation in regulating its price of sisal, the Mexican Government was prevailed upon to impose a Federal export tax and thus insure the price of sisal. In addition, in the early part of that year the Comision Monetaria was organized, financed by the Eric Corporation and its affiliated banks, and set up in the sisal market in Yucatan in order to raise the price of sisal. (R. 10, 11.)

Despite these efforts the sisal market continued weak in the United States, and finally the interested banks refused to make further advances. The Comision Monetaria ceased purchasing sisal and was eliminated as a factor in the sisal market in July, 1921. The Mexican Federal export tax was repealed and there again came into existence an open market in Yucatan which continued until the establishment of the present alleged monopoly. (R. 11.)

In May, 1921, as a result of conferences held by certain of the defendants in New York City, the defendant Acevedo (attorney in fact for the defendant Comision Exportadora de Yucatan) proceeded to Yucatan. It was his mission to arrange with the Yucatan state government for the formation of a corporation under the control of that government which would have a monopoly of the purchase, sale, and export of sisal produced in that state. In the event of the successful outcome of his mission, it was agreed that the Eric Corporation would sell to the corporation thus formed all of its holdings of stored sisal at a fixed arbitrary price to be agreed upon. (R. 12, 13.) It was further understood that the proposed organization in Yucatan would enter into a contract with the selling agency to be established by the defendants in the United States, which would give such selling agency exclusive sale of all sisal produced by the Yucatan organization. As a result of the activities of Acevedo, on July 16, 1921, the state of Yucatan, by enactment of a statute canceled the charter of the Comision Reguladora del Mercado de Henequen, and organized a new corporation of the same name, the name afterwards being changed to Comision Exportadora de Yucatan. (R. 13.)

On September 12, 1921, the Erie Corporation entered into a contract with the firm of Hanson and Orth, by the terms of which this brokerage firm became the general managers of the business of the Erie Corporation in disposing of its sisal. (R. 14.) November 5, 1921, the Sisal Sales Corporation was organized, which soon took over all of the business and assets of the Erie Corporation, and this corporation retained the firm of Hanson and Orth in the same relation as had the Erie Corporation. (R. 14, 15.)

On December 22, 1921, a contract was entered into in the city of New York between the Sisal Sales Corporation and the Yucatan Company, providing for the designation of the Sisal Sales Corporation as the general agent of the Yucatan Company, and as exclusive selling agent in connection with all sisal owned or controlled by the Yucatan Company, and giving to the Yucatan Company the right to draw upon the Sisal Corporation at sight for the payment of actual sales made by the Sisal Corporation for the account of the Yucatan Company. (R. 16, 17.)

On the same day that the formal contract was executed between the Yucatan Company and the Sisal Corporation, a letter signed by Acevedo as its attorney in fact was sent to the Eric Corporation by the Yucatan Company offering to purchase the entire stock of sisal owned by the Eric Corporation. By letter of the same date signed by the defendants Frederick T. Walker and F. W. Black, as vice presidents of the Eric Corporation, the offer was accepted. The sale of such sisal was consummated on February 21, 1922, at a fixed price of seven cents per pound. (R. 17, 18.)

On February 21, 1922, the Eric Corporation sold all of its other assets to the Sisal Corporation. In both of these transactions the purchasers gave promissory notes as full consideration, payable to the order of the Equitable Trust Company of New York. (R. 18.)

For various reasons, and particularly because of the fact that the old Comision Reguladora had been a defendant in a suit filed by the United States Government, it was considered expedient by the defendants to have the name of that company changed, and this was accordingly done by the state of Yucatan pursuant to a decree issued January 2, 1922, changing the name to Comision Exportadora de Yucatan. (R. 18.)

On the same day the state of Yucatan enacted a law exempting all sisal sold to the Exportadora Company from the payment of a special state tax imposed by the law of December 13, 1921. Also, on the same day, the Yucatan Company began buying sisal from the Yucatan planters at four cents per pound, drawing on the Sisal Corporation. (R. 18.) In the meantime the Mexican Federal Government reduced the Federal surtax on all state taxes, thereby increasing the discriminatory tax in favor of the Yucatan Company, the result of which was to put independent buyers out of business, causing them to close their offices and to return to the United States, and effecting a complete monopoly in Mexican sisal. (R. 18, 19.)

In December, 1922 there were approximately 101,461 bales of stored sisal in the United States pledged to the Eric Corporation, which had been withdrawn from the market for more than one year. On December 22, 1922, an agreement was reached whereby the Yucatan Company purchased this sisal and pledged it to the Equitable Trust Company of New York for the purchase price, the payments of the loan to be made by the Sisal Corporation out of the funds obtained from the sales of sisal for the account of the Yucatan Company;

and as a part of such agreement the Mexican Federal Government was induced to suspend the imposition of the Federal export tax for the year 1923. (R. 19, 20.)

By contract dated May 12, 1923, between Sisal Corporation and New York and Cuba Mail Steamship Company, defendants secured exclusive use of the regular steamship transportation between the ports of this country and Yucatan, with the result and effect of excluding all others. (R. 20.)

It was then alleged that as a result of the various acts done pursuant to the original arrangement, the defendants enjoyed a complete monopoly of sisal. That the Yucatan Company, with the financial backing of the Sisal Corporation, became the sole purchaser of sisal from producers in Mexico; and that the Sisal Corporation became the sole importer and distributor of Mexican sisal in the United States. That binder twine manufacturers and brokers who formerly competed with one another for the purchase of sisal in Mexico and the United States were compelled to obtain all of their requirements from the Sisal Corporation; and that these defendants have established higher and unwarranted prices for sisal in the United States. (R. 21–23.)

ASSIGNMENTS OF ERROR

1. The District Court erred in holding that the petition herein fails to state a cause of action under Sections 1 and 2 of the Sherman Antitrust Law and Section 73 of the Wilson Tariff Law and in denying to the United States relief under Section 4 of the Sherman Antitrust Law and Section 74 of the Wilson Tariff Law.

2. The District Court erred in holding that the petition charged only an agreement to procure monopolistic legislation in another country, that acts permitted by the local law of Yucatan were the basis for the suit by the Government, that nothing remains of the conspiracy that does not depend upon the claimed unlawfulness of such acts, and that it would be futile so far as the public interest is concerned to enter an injunction to restrain dealings with the Comision Exportadora de Yucatan and the Sisal Sales Corporation.

SUMMARY OF ARGUMENT

The petition, in setting forth a conspiracy in the United States to restrain and monopolize foreign commerce in the importation of sisal into the United States, and to increase its market price in the United States, states a cause of action under the Sherman Antitrust Act and the antitrust provisions of the Wilson Tariff Act. This is strengthened by the presence of allegations that overt acts both in this country and abroad were planned and executed in furtherance of the conspiracy.

The conspiracy was not "dependent" upon the execution of any one overt act. The court below erred in inferring that the conspiracy was dependent upon the success of the conspirators in obtaining discriminatory legislation from the State of Yucatan, and that because such legislation was lawful the conspiracy must therefore be immune from attack.

The case of *American Banana Company* v. *United Fruit Company*, 213 U. S. 347, is not in point. That case held only that damages can not be predicated upon an act abroad if lawful where committed. Assuming that it held further that no suit can be predicated upon an act abroad if lawful where committed, it does not extend to an act which though committed abroad is operative in this country. Nor does it extend to a conspiracy in this country of which such act is only a single element, other constituent effective domestic acts being present.

Nor for the same reasons can the fact, if it be a fact, that discriminatory legislation in Yucatan has been repealed render this case moot.

ARGUMENT

I

A CONSPIRACY WITH INTENT TO RESTRAIN AND MONOPOLIZE THE IMPORTATION INTO THE UNITED STATES OF A STAPLE PRODUCT, CARRIED INTO EFFECT BY OVERT ACTS COMMITTED BOTH IN THE UNITED STATES AND ABROAD, AND HAVING THE INTENDED EFFECT OF MONOPOLIZING AND ENHANCING PRICES, IS UNLAWFUL

This case involves a combination to control the production, purchase, transportation, importation, and sale in the United States of sisal.

Defendant banks were left in 1919 with large stores of sisal upon which they had foreclosed. Instead of proceeding to dispose of their sisal in a free competitive market, they chose to pool their product and establish a monopoly in its sale. The plan of monopoly followed closely a similar plan which had been in operation at an earier period and to which some, but not all, of the present defendants were parties.

Over 80 per cent of sisal is produced in the States of Yucatan and Campeche in Mexico, and defendants are charged with conspiring to monopolize the importation of that product, and with carrying such conspiracy into effect and actually enhancing prices by means of—

(*a*) Organizing and financing a corporation in the foreign country as an exclusive purchaser of the product, with power to fix the price and withhold the product at will from the market;

(*b*) Turning over to that corporation the existing stocks in the hands of the subsidiaries of the defendants, so as to form an exclusive pool (these stocks later disposed of);

(*c*) Obtaining for that corporation from a foreign local government a discriminatory tax effective to produce a monopoly;

(*d*) Organizing a single corporate selling agency in the United States, with power to fix prices and impose terms, such as—

(*e*) Requiring every American purchaser of the product to take a portion of the stored product together with the new product;

(*f*) Excluding all others from use of the only regular steamship line for the transportation of sisal from Yucatan to the markets of this country.

It seems that this states an indisputable cause of action under the Sherman and Wilson Acts.

II

THE DISTRICT COURT ERRED IN HOLDING THAT A CONSPIRACY WHOSE INTENT IS THE UNLAWFUL ONE OF EFFECTING A RESTRAINT OF TRADE AND MONOPOLY IS RENDERED IMMUNE FROM SUIT ON THE GROUND THAT A PARTICULAR ONE OF THE OVERT ACTS ON WHICH ITS SUCCESS DEPENDS WAS LAWFUL IN ITSELF

One step in the plan was to secure protective legislation from the foreign governments concerned. Upon this step defendants below concentrated their arguments and the court below rendered its decision. The view taken was that this foreign legislation was essential to the success of the monopoly, and that therefore, upon the authority of *American Banana Company* v. *United Fruit Company*, 213 U. S. 347, the conspiracy was lawful. The reasoning was that the monopolistic intent, and the overt acts committed in furtherance of it both in Mexico and in this country, would have failed of success in the absence of such legislation. To quote from the opinion of the District Court (R. 54):

> If acts "permitted by the local law" could not be inquired into for the purpose of awarding damages to a person injured, I do not follow the reasoning which regards them as a basis for a suit by the Government to restrain the parties connected with them as conspirators. It is true enough that an act, in itself innocent, may be a step in carrying out an unlawful conspiracy, but when, as here, nothing remains of the conspiracy that is not dependent upon the claimed unlawfulness of such act the whole case must fall.

The court overlooked the difference between a conspiracy and the acts done in furtherance of the conspiracy. The entry into a conspiracy with unlawful intent to restrain foreign trade and commerce is an offense under the Sherman Antitrust Law and the antitrust provisions of the Wilson Tariff Law. The unlawful character of such a conspiracy is not "dependent" upon the unlawfulness of any one or more of the particular acts relied upon by the defendants to make such conspiracy effective. The offense is complete when the conspiracy is entered into. (*Nash* v. *United States*, 229 U. S. 373, 378.)

The court below relied upon the following sentence in the opinion in the *Banana case*, 213 U. S. at p. 359:

> A conspiracy in this country to do acts in another jurisdiction does not draw to itself those acts and make them unlawful, if they are permitted by the local law.

The *American Banana case* was an action for damages under Section 7 of the Sherman Act, and the injury relied upon was committed at the instigation of the defendant by the Government of Costa Rica. The right to damages must depend upon the unlawful character of the injury. If the injury was lawful where committed, and therefore properly not an injury or tort at all, plaintiff could not recover damages simply because defendant had entered into an unlawful conspiracy in this country.

The sentence quoted from the *Banana case* is to the effect that a conspiracy in this country could not make acts which were lawful abroad unlawful here. It is in effect contended by appellees that the *Banana case* is authority for the proposition that the fact that such acts are lawful abroad will render the unlawful conspiracy itself lawful.

A conspiracy has often been defined to be a combination to attain an unlawful end by lawful means, or a combination to attain a lawful end by unlawful means. When a conspiracy is one to restrain foreign commerce and to monopolize the importation of a particular product, it is unlawful irrespective of the means employed to carry it out, and is subject to be enjoined under Section 4 of the Sherman Antitrust Act and Section 74 of the Wilson Tariff Act.

In the case at bar, moreover, the Government has not merely charged the entry into a conspiracy with unlawful purpose and aim, but also the actual attainment of the ends of that conspiracy by various overt acts. Of these overt acts, the act of inducing the Government of the State of Yucatan to enact the legislation referred to in the opinion below, was but one of many. Defendants were also charged with—

> (*a*) Organizing and financing a corporation in Yucatan to be an exclusive purchaser of sisal;
>
> (*b*) Turning over to that corporation the existing stocks of sisal in the hands of the subsidiaries of the defendants, so as to form an exclusive pool;
>
> (*c*) Cutting the price for sisal in this country to so low a figure as to compel the Government and citizens of Yucatan to agree for their own protection to the discriminatory and monopolistic legislation suggested by the defendants;
>
> (*d*) Organizing a single corporate selling agency in the United States, with power to fix prices and impose terms, such as—
>
> (*e*) Requiring every American purchaser of sisal to take a portion of the stored sisal together with the new product.

(*f*) Exclusive control of regular means of transportation of sisal from Yucatan.

The District judge, in fastening his attention upon the Yucatan statute, overlooked the broader aspect of the conspiracy.

His reasoning appears to be that, without the enactment of the discriminatory legislation in Yucatan, the conspiracy would have been unsuccessful—that therefore it is "futile, so far as the public interest is concerned," to restrain it. We hardly think that this Court will announce a rule of law to the effect that when a group of conspirators plan to execute a number of overt acts, some of which are lawful in themselves, and some unlawful, the courts will leave that conspiracy untouched if it appears that it would in fact have failed in its unlawful purpose unless one of the lawful overt acts had been consummated, and that in a case in which the unlawful purpose of the conspiracy is in *actual operation* at the date of the petition.

III

THE BANANA CASE IS NOT AUTHORITY UPON THE PRESENT CASE. THE CASES WHICH FOLLOWED IT ESTABLISH THE RULE THAT EVEN ACTS DONE ABROAD WHICH ARE LAWFUL THERE MAY BE THE BASIS OF A SUIT IF THEY ARE OPERATIVE HERE AND ARE UNLAWFUL UNDER OUR LAW

There are three substantial grounds of differences between the *Banana case* and the case at bar:

(1) The *Banana case* sounded in tort for damages and the damages flowed entirely

from the act of the foreign government, while in the *Sisal case* the United States seeks equitable relief from a conspiracy which contemplated and executed restrictive and monopolistic acts in the United States, as well as abroad;

(2) The conspiracy in the *Banana case* was aimed at production only and no intent to affect, or direct effect upon, interstate commerce was shown, while in the *Sisal case* the conspiracy was aimed at restraint upon purchase, transportation, storage, and sale—every essential element of commercial traffic and intercourse;

(3) The conspiracy itself in the *Banana case*, and not the overt acts only, which caused the damage to plaintiff, was entered into in Costa Rica between the defendant company and the Costa Rican government, whereas in the *Sisal case* the alleged conspiracy entered into in Yucatan between the emissary of defendants and the Yucatan government was only incidental to the principal conspiracy between the various defendants which was entered into in the Southern District of New York.

The limitations of the doctrine of the *Banana case* are illustrated by later decisions of this Court.

United States v. *Nord Deutscher Lloyd*, 223 U. S. 512, involved an indictment under the statute forbidding a steamship company to take a charge or security for the return passage of an alien. The lower court sustained the demurrer on the ground that the money was paid and received in Germany. In reversing the judgment, this Court held that the doctrine of the *Banana case* does not apply to acts which, though committed abroad, become operative in this country. (223 U. S. at p. 518.) Thus, in that case the act in Germany became operative in this country in that the defendant company was enabled to retain the return passage money. So in the case at bar the acts in Mexico become operative in this country in that the defendants are enabled to fix prices and control the market in sisal here.

This Court in *United States* v. *Pacific & Arctic Co.,* 228 U. S. 87, considered the illegal effects of a combination made in the United States between carriers to monopolize certain transportation, partly within and partly without the United States, and found such combination to be within the prohibition of the Antitrust Act and also within the jurisdiction of the criminal and civil law of the United States, even if one of the parties combining be a foreign corporation.

In its opinion (page 106) this Court stated:

> In other words, it was a control to be exercised over transportation in the United States, and, so far, is within the jurisdiction of the laws of the United States, criminal and civil. If we may not control foreign citizens or corporations operating in foreign territory, we certainly may control such citizens and corporations operating in our territory, as we undoubtedly may control our own citizens and our own corporations.

United States v. *Twenty-Five Packages of Panama Hats*, 231 U. S. 358, held that although a maker of a fraudulent invoice in a foreign country be not punishable, the goods might because of that fraud be subject to forfeiture upon arrival in the United States. At page 362 of the opinion it is said:

> The very fact that the criminal provision of the statute does not operate extra-territorially against the consignor, would be a reason why the goods themselves should be subjected to forfeiture on arrival here. Cf. *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, 356; *United States* v. *Nord Deutscher Lloyd*, 223 U. S. 512.

Similarly, the very fact that defendants in the case at bar have made use of one means beyond the territorial jurisdiction of the United States, to attain their unlawful purpose of monopolizing and controlling the market in the United States, would suggest to the courts to be alert to note the presence of the agreement and of many overt acts within the territorial limits of the United States so as to bring the conspiracy in the present case within its jurisdiction.

In *United States* v. *Bowman*, 260 U. S. 94, this Court had before it an indictment for conspiracy to defraud the United States charging that all the elements of the offense, the conspiracy as well as the overt acts, took place on the high seas or in a foreign land. At page 98 of the opinion, the Chief

Justice distinguished between "crimes against private individuals or their property" and "criminal statutes which are, as a class, not logically dependent on their locality for the Government's jurisdiction, but are enacted because of the right of the Government to defend itself agains obstruction, or fraud wherever perpetrated." [1]

In the opinion in the *Banana case* itself, at page 357, the Court recognized this broader aspect of

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[1] *American Banana Company* v. *United Fruit Company* has also been cited in the following cases in this Court. In three of the cases the decision was that the courts of this country had jurisdiction of the particular acts in issue; the other three each involved specific acts in foreign countries, having no operative effect in the United States. The names of the cases, the points for which the *Banana case* was cited, and the decisions follow:

The Titanic, 233 U. S. 718, 732; cited to the effect that the Act of Congress governing limitation of liability does not control the conduct of a British ship in the high seas; decision that where parties of various nationalities are before the court, or the law of the ship's nationality is shown to be similar to that of this country, the American rule will be applied.

Ricaud v. *American Metal Company*, 246 U. S. 304, 309; cited to the effect that "the courts of one independent government will not sit in judgment on the validity of the acts of another done within its own territory": decision upholding the title to property which had been condemned and sold by the recognized Mexican government.

Sandberg v. *McDonald*, 248 U. S. 185, 195; cited to the effect that "legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction"; decision that Seaman's Act did not extend to payments of advance wages to alien seamen shipping abroad on a foreign vessel.

Grogan v. *Walker & Sons*, 259 U. S. 80, 93; cited in dissenting opinion to the effect that "it is certainly the first the Sherman Act by confining its decision to the facts there at issue:

> We think it entirely plain that what the defendant did in Panama or Costa Rica is not within the scope of the statute *so far as the present suit is concerned.* (Italics ours.)

Assume, for purposes of argument, however, that neither the Sherman Act nor even the Wilson Act are to have any extraterritorial operation, and that the *Banana case* is to be put upon the very broad ground that the courts of the United States must recognize as legal whatever is done solely in foreign countries in restraint of the flow of commerce into the United States, at least until Congress has expressly spoken to the contrary. It remains undisputed that conspiracies within the United States and overt acts in pursuance thereof within the United States give our courts jurisdiction.

In the case of *United States* v. *American Tobacco Company,* 221 U. S. 106, this Court in substance held that contracts entered into in England, be-

---

sense of every law that its field of operation is the country of its enactment"; decision that National Prohibition Act covers the transshipment in bond of whisky consigned through New York from Canada to Mexico.

Cunard S. S. Company v. *Mellon*, 262 U. S. 100, 123; cited to the effect that the jurisdiction over a domestic ship on the high seas arises out of the nationality of the ship and not for a territorial reason; decision that the National Prohibition Act is territorial in operation.

New York Central Railroad Company v. *Chisholm*, 268 U. S. 29, 32; cited generally; decision that Employers' Liability Act does not extend to accident in Canada.

tween an American corporation and a British corporation, but having the effect of restraining the commerce of the United States, were violative of the Sherman Act.

The acts done in Yucatan were but a single element of the case at bar. The defendant banks, and their officers and accomplices in New York, were not content to invoke the aid of the foreign government. If we assume that would be legal, we have merely dipped into the charges of this petition.

They further set up in Yucatan a private purchasing corporation with a monopolistic purpose. Their acts in Yucatan were thus not confined to use of the instrumentality of government. But more, their acts were not confined to Yucatan.

In the United States, to induce the foreign government to accede to their demands, they resorted to abnormal price cutting as a threat to the citizens and state of Yucatan and a means to monopoly.

In the United States they organized a monopolistic sales corporation and obtained for it an exclusive agency contract with the foreign purchasing corporation. Through this agency they raised prices to the American consumer.

They turned over to the foreign corporation stores of sisal in existence both in this country and in Yucatan.

They made an exclusive contract with the only steamship corporation regularly plying between Yucatan and New York.

And in the United States they had met and entered into the contract, combination, or conspiracy of which all these acts were but the means to the end of monopoly.

The conspiracy had three principal elements, i. e., American financial support, a monopolistic buying agency in Mexico, and a monopolistic selling agency in America. Discriminatory legislation barred all but the Exportadora from the Mexican market, but even it, with that aid, could not have been an efficient monopolizer there without the American money advanced by the Sisal Sales Corporation, the American monopolistic distributor.

IV

THE ANTITRUST PROVISIONS OF THE WILSON TARIFF ACT ARE PARTICULARLY DIRECTED AGAINST RESTRAINTS UPON FOREIGN COMMERCE BY IMPORTERS

The Wilson Act was not referred to in the pleadings, briefs, or opinions in the *Banana case,* October Term, 1908, No. 686. Nor has it been construed in any case that has come to our attention. Some may doubt whether its scope goes beyond that of the Sherman Law, but whether or not this be the case, its applicability to the present case is clear. It refers not merely to—

> Every contract, combination * * *, or conspiracy in restraint of trade or commerce (Sherman Act, sec, 1, 26 Stat. 209),

but to—

> Every contract * * * between two or more persons or coporations either of whom, as agent or principal, is engaged in *importing* any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles *imported or intended to be imported* into the United States, or of any manufacture into which such imported article enters or is intended to enter (Wilson Tariff Act, sec. 73, 28 Stat. 570; 37 Stat. 667),

and not merely to—

> Every person who shall make any such contract or engage in any such combination or conspiracy (Sherman Act, sec. 1, 26 Stat. 209),

but to—

> Every person who is or shall hereafter be engaged in the *importation* of goods or any commodity from any foreign country in violation of this section of this Act, or who shall combine or conspire with another to violate the same. (Wilson Tariff Act, sec. 73, 28 Stat. 570; 37 Stat. 667.)

In 31 Opinions of the Attorney General, 545, 552, is found an interesting construction of the statute. Attorney General Wickersham held that although a combination of German potash growers protected by German law does not in itself violate the Act, its corporate representative in this country is acting unlawfully:

> It is unnecessary to say that a law enacted by the German Government can not, in itself, constitute a combination within the meaning of this Act. Whatever the conditions may have been that prompted its passage, or the influences that conspired to bring it about, yet upon the passage of the law it became an act of the German Government and can not in any sense be considered a combination. But the statute of the German Empire can not protect citizens of that country, still less American citizens, from the consequences of acts done within the jurisdiction of the United States in violation of *its* laws. The agreement or contract entered into in Germany between the various potash owners, so far as its provisions are the same as the provisions of the German law, does not of itself constitute an unlawful combination within the provisions of our law. But any acts done within our jurisdiction must be judged by our law. * * * (552, 553).
>
> * * * It is an unquestioned fact that a very large quantity of potash is imported into the United States; but are these importations made by persons or parties, any one of whom has entered into this or another unlawful combination? The facts submitted to me do not clearly show the relationship

between the American corporation, known as the German Kali Works, and the foreign syndicate created by this agreement, but they do show that one of two relationships must exist. Either the American corporation is a selling agent of the syndicate, which is composed of the mine owners, and the potash when shipped is consigned to it as such agent, or this corporation is a purchaser of the goods from the syndicate, and as such purchaser has agreed to handle the entire supply from the mines which are embraced in the syndicate at the prices fixed by this combination, and in accordance with its provisions, and has thereby either become a party to the agreement or has entered into an independent agreement of the same character. In either event, I think the statute would apply, because, in the first instance, the importer would be the German syndicate, or rather the various mine owners who under the combination have made the syndicate their agent, and, in the second instance, the American corporation would be the importer, which by its contract has become a party to this or another unlawful combination (554).

V

REPEAL BY THE STATE OF YUCATAN OF THE DISCRIMINATORY LEGISLATION IN FAVOR OF DEFENDANTS' MONOPOLY WOULD NOT RENDER THE CASE MOOT

It has been suggested to the Government that in fact the legislation in Mexico has changed so as to deprive these defendants of continued success in their conspiracy to monopolize. It might therefore be suggested that the present case is moot.

Assuming that the facts are that the discriminatory legislation in Mexico has since been repealed, in that the effect thereof has been to render the conspiracy of the defendants at the present time ineffective, it does not follow that the case is moot. As already pointed out, the theory of this petition is three-fold:

> (1) That a conspiracy was entered into in the United States for the purpose of monopolizing the foreign commerce in sisal in the United States;
>
> (2) That certain acts were planned to be done, and were done in the United States in furtherance thereof, and certain conditions and factors (such as the Sisal Sales Corporation) were created and continued in existence to the filing of the petition;
>
> (3) That certain other acts were planned to be done, and were done in Mexico, in furtherance thereof.

One of the acts under the third heading was to induce the Government of the State of Yucatan to enact discriminatory legislation in favor of a corporation to be set up and controlled by these defendants. Assume that that purpose, though at first successful, has now failed, due to the action of the Government of Mexico. The gist of the offense here charged, the conspiracy with unlawful intent in the United States, must be presumed to continue.

If such conspiracy has not continued, but has in fact been abandoned by the parties since the filing of the petition, the Government is still entitled to a decree in equity against the parties. (*United States* v. *Trans-Missouri Freight Association,* 166 U. S. 290.)

The rule applied by this Court in determining whether a suit to enjoin a conspiracy under the Antitrust laws has become moot is illustrated by comparison of the *Trans-Missouri* case with the case of *United States* v. *Hamburg-American Company,* 239 U. S. 466. (Followed in *United States* v. *American-Asiatic Steamship Company,* 242 U. S. 537.)

In the *Trans-Missouri case,* it appeared that after judgment entered below, defendants had dissolved the association set up by them in pursuance of, and as a means to the attainment of the ends of the conspiracy charged. It was held that by their voluntary act the defendants could not deprive the courts of jurisdiction to enter an effective decree against future violations of the law. (166 U. S. at p. 309.)

In the *Hamburg-American case,* on the other hand, the question as to whether the case had become moot arose, not as a result of action by the defendants but as a result of the European War, of which this Court took judicial notice. In the opinion of Mr. Chief Justice White, 239 U. S. at pp. 476, 477, the question is considered at length, and the conclusion reached that if the alleged moot character of the suit is the result of action by defendants, the Court will retain jurisdiction (p. 477):

> "But if the intervening event is owing to the plaintiff's own act, or to a power beyond the control of either party, the court will stay its hand."

In the present case the intervening act now under consideration is owing to a power beyond the control of either party. Although that act is not one of which the Court will take judicial notice, as in the *Hamburg-American case*, but is the act of a foreign government which must be the subject of an answer and proof, we deem it our duty to call it to the attention of this Court. However, it does not follow that the case becomes moot.

The intervening legislation in Yucatan would not, as did the World War in the *Hamburg-American case*, render the conspiracy wholly ineffective.

The conspiracy involved a purpose, and embraced many elements, which can not be affected by acts of the legislatures of Mexico or Yucatan.

Indeed, the error upon which an argument that this case is moot would have to be premised is the same error into which the court below was led in considering the merits—the error of placing the exclusive emphasis on the legislation of Yucatan. This is not a suit to enjoin the legislation of Yucatan or to deprive a particular group of American citizens of its benefits. This is a suit to enjoin an alleged conspiracy to destroy the free competitive market in sisal in the United States and to substitute a monopoly, based in part on foreign legislation and in part on the many other measures set forth in the original bill.

Respectfully submitted.

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Solicitor General.
William J. Donovan,
Assistant to the Attorney General.
Rush H. Williamson,
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William D. Whitney,
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February, 1927.

○

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No. 200

IN THE

Supreme Court of the United States

OCTOBER TERM, 1926

THE UNITED STATES OF AMERICA, *Appellant*

v.

SISAL SALES CORPORATION, *et al.*

Appeal from the District Court of the United States
for the Southern District of New York.

BRIEF FOR APPELLEES, SISAL SALES CORPORATION, FREDERICK T. WALKER, LYNN H. DINKINS, F. W. BLACK, J. A. BEATSON, THE EQUITABLE TRUST COMPANY OF NEW YORK, THE ROYAL BANK OF CANADA, INTERSTATE TRUST AND BANKING COMPANY and COMISION EXPORTADORA de YUCATAN.

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1921, a monopoly would still continue to exist, and there would be nothing to prevent the Comision Exportadora from doing business through some other agency with the financial support of other banks either in the United States or foreign countries. A court of equity will not grant an injunction which will be futile to bring about the relief sought, and will only work hardship upon the parties affected thereby 38

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926

No. 200

THE UNITED STATES OF AMERICA, *Appellant*

v.

SISAL SALES CORPORATION, *et al.*

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR APPELLEES, SISAL SALES CORPORATION, FREDERICK T. WALKER, LYNN H. DINKINS, F. W. BLACK, J. A. BEATSON, THE EQUITABLE TRUST COMPANY OF NEW YORK, THE ROYAL BANK OF CANADA, INTERSTATE TRUST AND BANKING COMPANY and COMISION EXPORTADORA de YUCATAN.

The Opinion of the Court Below.

The opinion of the District Court, by District Judge Augustus N. Hand, granting the motions of defendants to dismiss the petition in the present case, has not yet been reported in the Federal Reporter. This opinion appears on pages 52-4 of the Transcript of Record and for convenience is herein set out as follows:

> "This is a suit to restrain an alleged conspiracy by the defendants in violation of the Sherman Anti-trust Act and the Wilson Act.
>
> "The conspiracy relied upon was to monopolize the export market to the United States in sisal, a product of Yucatan, extensively used for binder twine for agricultural purposes. It is unnecessary to determine whether an unlawful conspiracy was once formed. The original purpose of the agreements and transactions pleaded by the Government with which most of the parties defendant were connected was to enable the defendant banks to dispose of large quantities of sisal on which they had advanced money after the war. The complaint alleges that those stocks were disposed of some years ago.
>
> "It is assumed that the defendants planned to advocate and obtained legislation in Yucatan giving the Comision Exportadora a monopoly and that the Eric Corporation which held the surplus stocks of the banks pooled its sisal with that of the Yucatan monopolistic corporation. These stocks were long ago disposed of and we have nothing left but the Comision Exportadora, and its selling agent in America, the Sisal Sales Corporation, to which the various defendant banks are lending money in aid of their financial operations.
>
> "The question is whether the defendants now should be restrained from dealing with the Sisal Sales Corporation and its principal, Comision Exportadora de Yucatan, because the latter is a monopoly created by the Government of Yucatan and protected by such favorable and discriminatory tax laws of that State that it is enabled to control the American market and fix prices in sisal. I think it manifest from the decision of the Supreme Court in American Banana Co. *v.* United Fruit Company, 213 U. S. 347, that an agreement to procure monopolistic legislation in another

country cannot be treated as unlawful by our courts. The Government attempts to draw a distinction between the American Banana case because that was an action by an individual to recover treble damages for injuries arising out of a conspiracy to monopolize the banana trade. One of the wrongful acts consisted of a seizure by the Costa Rica Government of a banana plantation belonging to the American Banana Company, at the alleged instigation of the defendant United Fruit Company. The Supreme Court held the cause of action invalid and said 'a conspiracy in this country to do acts in another jurisdiction does not draw to itself those acts and make them unlawful, if they are permitted by the local law.'

"If acts 'permitted by the local law' could not be inquired into for the purpose of awarding damages to a person injured, I do not follow the reasoning which regards them as a basis for a suit by the Government to restrain the parties connected with them as conspirators. It is true enough that an act, in itself innocent, may be a step in carrying out an unlawful conspiracy, but when, as here, nothing remains of the conspiracy that is not dependent upon the claimed unlawfulness of such act the whole case must fall. An injunction to restrain dealings with the Comision Exportadora de Yucatan and the Sisal Sales Corporation would be quite futile, so far as the public interest is concerned. Anyone else could surely deal with them and the successors to the alleged unlawful conspirators would have to be at once treated as legitimate traders and go scatheless.

"The motion to dismiss is granted."

Grounds of Jurisdiction.

The order of the District Court dismissing the petition of the Government was entered on June 30, 1925 (R. 55).

On July 24, 1925, the Government filed its petition for an appeal to this court, which petition was allowed by order of the District Court entered on the same day (R. 57, 58).

The appeal to this court is authorized by the provisions of the Act of February 11, 1903, c. 544, § 2, 32 Stat. 823; as amended by Act of June 25, 1910, c. 428, § 1, 36 Stat. 854, and by Act of March 3, 1911, c. 231, § 291, 36 Stat. 1167; and as confirmed by Section 238 of the Judicial Code (U. S. Code, § 345), as last amended by Act of February 13, 1925, c. 229, § 1, 43 Stat. 938.

Statement of the Case.

This is an appeal from an order of the District Court of the United States for the Southern District of New York, whereby motions of certain defendants to dismiss the petition of the Government were granted.

The petition of the Government was brought under Section 4 of the Sherman Anti-trust Act (Act of July 2, 1890, c. 647, 26 Stat. 209) and Section 74 of the Wilson Tariff Act (Act of August 27, 1894, c. 349, 28 Stat. 509, 570, as amended by the Act of February 12, 1913, c. 40, 37 Stat. 667). The petition prays for a decree restraining the defendants from carrying out an alleged combination, conspiracy, monopoly or agreement to restrain interstate and foreign trade and commerce in sisal, and from entering into or continuing any similar combination, conspiracy, monopoly or contracts, and from combining, conspiring or agreeing to restrain interstate and foreign trade and commerce in sisal, or to increase the price of sisal in the United States, and from monopolizing, attempting to monopolize or combining or conspiring to monopolize interstate and foreign trade and commerce in sisal.

The motions to dismiss the petition are based upon the following grounds (R. 51, 52):

> "I. The petition herein does not state facts sufficient to constitute a valid cause of action in equity against these defendants or any of them.
>
> "II. It appears on the face of the petition herein that said petition is wholly without equity.

"III. It appears on the face of the petition herein that it is impossible to adjudicate or make any judgment or decree in this action, except a judgment or decree dismissing the petition herein, without examining, inquiring into, and investigating the laws, proclamations, and decrees of independent and sovereign foreign States, to wit, the Republic of the United States of Mexico and the State of Yucatan, and without investigating, examining, inquiring into, passing upon, and judging the lawfulness, validity, or legality of said laws, proclamations, and decrees, and of acts done by or under the authority of such sovereign and independent States and the laws, proclamations, and decrees thereof."

Summary of Petition.

The petition of the Government is largely made up of allegations characterizing the acts of the defendants as a combination and conspiracy. These characterizations are reiterated again and again with the evident purpose of creating an atmosphere of distrust of the motives and purposes of the defendants. If these allegations are stripped away, however, an examination of the actual facts alleged in the petition will show that the action taken by the various defendants from time to time was not only lawful, but was actuated by motives entirely different from a desire to monopolize the commerce of the United States in sisal.

Articles I, II and III of the petition consist of preliminary allegations. In Article I the residences of all of the defendants and the official connections of the individual defendants are set forth (R. 1). Article II contains averments designed to show jurisdiction of the District Court (R. 2).

In Article III (R. 3) it is alleged that sisal is a fiber obtained from the henequen plant and is used mainly in the manufacture of binder twine, that Mexico is the only country in which sisal is produced in sufficient quantities to supply the needs of the United States, and that practically the entire output of Mexican sisal is produced in the State of Yucatan, which, with the small quantity produced in the neighboring state of Campeche, is exported through the port of Progreso, Yucatan, to the United States. It is also alleged that more than eighty per cent. of the binder twine used in the United States is made of sisal, and that the remainder is made from manila hemp produced in the Philippine Islands, an insignificant portion of binder twine being made of fibers imported from Java, Havana, German East Africa and New Zealand.

In an attempt to support the charge of conspiracy made against the various defendants, the petition of the Government, beginning with Article IV (R. 4), goes into the history of the sisal business as far back as the year 1915, prior to which time it is alleged that sisal was sold to manufacturers of binder twine in the United States under conditions of competition.

Before analyzing in detail these allegations, it may be helpful to consider the following brief summary of the allegations of the petition concerning the existence of a closed or open market for sisal in Yucatan during the period from 1915 onward and concerning the reasons for the various open and closed markets, respectively.

Prior to 1915—	an open market existed (R. 4).
From latter part of 1915 to August 1919—	the market was closed through the operations of the old Comision Reguladora del Mercado de Henequen (R. 7) which collapsed in or about August 1919 (R. 8).
From August 1919 to March 19, 1921—	an open market existed (R. 8, 10, 11).
From March 19, 1921 to August 23, 1921—	the market was closed by passage on March 19, 1921, of a decree of the Mexican Government imposing a discriminatory export tax in favor of Comision Monetaria, which tax

	was repealed on August 23, 1921 (R. 11).
From August 23, 1921 to March 7, 1922—	an open market existed (R. 11, 19).
From March 7, 1922 to date of filing of the petition, June 24, 1924—	a closed market existed in Yucatan through the imposition by a law of the State Government of Yucatan of a discriminatory tax in favor of the Comision Exportadora de Yucatan (R. 19 *et seq.*).

It will be noticed from the above statement that during the nine years intervening between 1915 and the time of the filing of the petition, the market for sisal in Yucatan was closed to buyers other than corporations created either by the Government of Yucatan or by the Government of the United States of Mexico for the purpose of regulating the sisal market, during a period of approximately six and one-half years, and was open during a period approximately two and one-half years only.

Of the three periods during which a closed market existed, the first, as stated by Judge Hough in *United States* v. *Pan American Commission*, 261 Fed. 229, at page 232, was brought about by the power of General Alvarado, the dictator under General Carranza of the State of Yucatan; the second was created by a preferential tax imposed by the government of the United States of Mexico; and the third, which was the one in existence at the time of the filing of the petition of the Government, was brought about by the enactment of a preferential tax law by the State of Yucatan.

Article IV of the petition is entitled "First Successful Monopolization of Trade and Commerce in Sisal in the United States" (R. 4).

The transactions referred to in this Article are utterly immaterial as far as the situation existing at the time of the filing of the petition is concerned. The only one of the present defendants who is alleged to have had any connection with the facts set forth in Article IV is Lynn H. Dinkins. There is set forth in this Article an alleged attempt upon the part of Dinkins and one Wexler and the Comision Reguladora, an institution created under the laws of the State of Yucatan, to monopolize the sisal output of Mexico through an agreement dated November 13, 1915. It appears on the face of the petition that this alleged attempt at monopoly broke down in 1917.

That none of the facts referred to in Article IV of the petition had any further significance at the time of the filing of the petition is made clear by the following allegation (R. 7):

> "In 1917 the Mexican interests no longer requiring the services of the Pan American Commission Corporation to borrow money, repudiated the contract of November 13, 1913 as modified. A suit brought against that Company, Comision Reguladora and others under the Anti-Trust laws, was dismissed without prejudice for want of actuality."

The suit thus casually referred to in the Government's petition is the case of the *United States* v. *Pan American Commission* (*supra*). In that case it appears that the Government brought a bill in equity against the Pan American Commission Corporation, Comision Reguladora del Mercado de Henequen, Dinkins, Wexler and others alleging conspiracy to monopolize the importation of sisal into the United States. The defendants moved to dismiss the bill on the ground that the questions sought to be raised in the litigation had become moot. On the hearing of the motion, the Government asked permission to offer evidence taken in support of the bill, and leave to do so having been granted, the Government put in all the evidence taken by deposition and rested. The defendants then put in all their testimony and rested. Judge Hough dismissed the bill on the ground that the case had become moot, but in so doing he said at page 233:

> "The claim of conspiracy rests on one of two propositions; at least I can discover no other even suggested by the government. Either anyone who lends money to a monopolist becomes a partner or conspirator with him by the act of loan, or the conspiracy depends on some spiritual or sympathetic emotion actuating the loan.
>
> The first proposition is not, I apprehend, relied on, and is bad law anyhow. As to the second, it seems to me no more than a decent regard for citizens accused of wrongdoing to record my opinion that this record contains no evidence whatever of any sympathy with or desire to assist anybody who wished to raise the price of sisal in the United States over November, 1915, price, on the part of Messrs. Wexler and Dinkins.
>
> It is natural to inquire, why and how did the price-raising efforts of the Reguladora succeed? Here, as was done by the Supreme Court, we can and must take judicial notice of the present war, and its more notorious results. Not much judicial notice need be taken, for the evidence shows the movement and use of manilla hemp, which is what really controls the price of sisal. The inferior fiber must find its own level, with reference to manilla prices and supply.
>
> In my opinion the one thing (except Alvarado's iron hand) that has put up the price of sisal is the lack of shipping to move manilla and the enormous demand for manilla for marine rope. This is just as much the result of a war, of *the* war in which *we* are now engaged, as the situations recognized as 'staying the hand of the court', in the cases first above cited.
>
> Motion granted, and bill dismissed without prejudice."

The decision of Judge Hough disposes of everything contained in Article IV of the petition.

Article V of the petition is entitled "Efforts on the part of certain defendants to restrain and monopolize trade and commerce in sisal between 1917 and 1921" (R. 7).

This Article starts out with an allegation that the

Comision Reguladora was obliged to borrow large sums from banks in the United States, and that most of this money was furnished by The Equitable Trust Company of New York and the Royal Bank of Canada, while some of it was also furnished by the Interstate Trust and Banking Company of New Orleans and other banks in the United States.

In view of the statement in the opinion of Judge Hough, quoted above, it is not surprising that the banks felt perfectly safe in making loans to the Comision Reguladora del Mercado de Henequen in the ordinary course of their banking business upon the security of sisal being imported into the United States. Indeed if the banks of the United States had not been willing to finance the importation of sisal from Yucatan, the price of binder twine which would have resulted during the war when the demands for all other fibers were so enormous, would have been disastrous to the farmers of the United States.

In 1919 the banks which had made these advances were suddenly faced with a great drop in the price of sisal. This drop in the price of sisal occurred as part of the sweeping economic readjustment which took place in that year. The banks thereupon refused to make further advances to the Comision Reguladora, and the Yucatan State Government declared a free and open market for sisal in Yucatan.

In August, 1919, the Banks foreclosed on the sisal stored in the United States, and organized the defendant Eric Corporation, which purchased the stock of sisal sold at the foreclosure sale. The allegations of the petition contained in Article V show the continued efforts of the Banks to dispose of the accumulated stock of sisal during the period from August, 1919, to March 19, 1921. Emphasis is laid in the petition upon the purchase by the Eric Corporation of 250,000 bales of sisal from the Comision Reguladora del Mercado de Henequen which is alleged to have taken place by contract of January 23, 1920 (R. 10). It must be remembered, however, that when this purchase was made the market for sisal in Yucatan was open and the result of this purchase was simply to add to the stock of the Eric Corporation, and in no way to monopolize the sisal market, sisal being constantly produced and purchased in Yucatan by buyers other than the Eric Corporation (R. 8, 10, 11).

This period terminates with the imposition on March 19, 1921, by the Mexican Federal Government of a discriminatory tax on sisal in favor of the Comision Monetaria. From March 19, 1921, to August 23, 1921, the Comision Monetaria was engaged in purchasing sisal in Yucatan under the contract of April 20, 1921 (Exhibit "B" annexed to the petition) by the terms of which the Eric Corporation made advances to the Comision Monetaria to enable it to make such purchases (R. 29). In July, 1921, the Eric Corporation refused to make further advances of money to the Comision Monetaria, and on August 23, 1921, the Federal Government of Mexico repealed the discriminatory export tax on sisal.

It is very important to note that it is alleged in the petition (R. 11) that after August 23, 1921—"Again there existed an open market in Yucatan which continued until the establishment of the present monopoly as hereinafter described."

It is alleged in Article V of the petition that the stock of sisal of the Comision Monetaria was added to the stock of the Eric Corporation. As a matter of fact, as appears elsewhere in the petition, the title to this sisal remained in the Comision Monetaria and the same was simply pledged to the Eric Corporation. This sisal was afterwards disposed of by a sale from the Comision Monetaria to the Comision Exportadora. *All of the sisal of the Eric Corporation, whether acquired from banks which originally held the same as security, or from the Comision Reguladora del Mercado de Henequen, and all of the sisal of the Comision Monetaria, had been disposed of to binder twine manufacturers prior to the filing of the Government's petition* (R. 21).

This brings us to Article VI of the petition, which is entitled "The existing restraint and monopolization" (R. 12).

All of the allegations of the petition which precede Article VI were admittedly inserted in the petition for the sole purpose of showing the alleged dominant purpose of the defendants to monopolize trade in sisal. It is the contention of the defendants, on the contrary, that these allegations clearly show that the defendants came into the sisal business as bankers for the sole purpose of financing the importation of sisal into the United States, and that after they had acquired the large stocks of sisal upon which they were obliged to foreclose when the Comision Reguladora collapsed in 1919, their only desire was to dispose of this collateral at the earliest possible moment to anyone who would purchase the same upon reasonable terms.

The vital allegation of Article VI of the petition is as follows (R. 12):

> "On or about May 1, 1921, the defendants (except the Comision Exportadora de Yucatan and the Sisal Sales Corporation) being alarmed by threatened conditions of competition in the sisal trade, and seeking to secure the control of the business which it had been the purpose of the Eric Corporation and the Comision Monetaria to exercise, which control it had become apparent could not be made completely effective by the combination between the Eric Corporation and the Comision Monetaria combined, conspired, and confederated together to restrain and monopolize the interstate and foreign trade and commerce of the United States in sisal, and to prevent and restrain competition in the purchase and sale of sisal, and to maintain the price of that commodity at much higher levels than would obtain under conditions of free and open competition.
>
> In pursuance of their unlawful purpose, the defendants, Charles D. Orth, Alvin W. Krech, Lynn H. Dinkins, F. W. Black, J. A. Beatson, Frederick T. Walker, Michael J. Smith, Tomas Castellanos Aceve-

do, and others, held a series of conferences in New York City, and elsewhere in the United States, *at which it was agreed that the defendant, Tomas Castellanos Acevedo* (now attorney in fact for the said defendant, Comision Exportadora de Yucatan, formerly Comision Reguladora del Mercado de Henequen) *should proceed to Yucatan, Mexico, and arrange with the persons in control of the Yucatan State Government, and others, for the formation of an organization under the control of the Yucatan State Government, to engage in the purchase, sale, and export of sisal produced in Yucatan, and to cause to be enacted in the Republic of Mexico, or in the States of Yucatan and Campeche, any laws or regulations necessary to create a monopoly of the sisal produced in said states, and such laws and regulations as might be necessary for a reduction of acreage and control of prices.*" **(Italics ours.)**

It is then alleged that the following events took place:

On July 16, 1921, a law was passed by the State of Yucatan forming a new Comision Reguladora del Mercado de Henequen. The name of this new Comision Reguladora del Mercado de Henequen was changed on January 2, 1922 to Comision Exportadora de Yucatan. On September 12, 1921 a contract was entered into between defendants Hanson and Orth and the Eric Corporation (Exhibit "C" annexed to the petition), whereby Hanson and Orth became the general managers of the business of the Eric Corporation (R. 31). On November 5, 1921 the defendant Sisal Sales Corporation was formed. On December 13, 1921 a production tax was placed upon sisal by the state of Yucatan and on December 14, 1921 a law restricting the production of sisal was passed by the state of Yucatan. On December 22, 1921 the stock of the Eric Corporation was sold to the Comision Exportadora de Yucatan and a contract was entered into between the Comision Exportadora de Yucatan and the Sisal Sales Corporation whereby the Comision Exportadora appointed the Sisal Sales Corporation its exclusive selling agent for the sale of sisal. This contract is annexed to the petition and marked Exhibit "G" (R. 37).

On January 1, 1922, the Mexican Federal Government reduced the surtax on all state taxes from 50% to 25%, thus making the discrimination in favor of the Comision Exportadora about 2¼¢ per pound. On January 2, 1922, the Comision Exportadora was exempted from payment of the production tax of December 13, 1924 (R. 18).

Then follows the allegation of the actual creation of the monopoly complained of (R. 19). It is alleged that "even after the Comision Exportadora de Yucatan began purchasing sisal on January 2, 1922, independent powers continued to purchase, paying the 2¼¢ U. S. gold per pound discriminatory tax". The petition then continues

> "In order to completely insure against the further purchase of sisal in Yucatan by independent buyers, the State Government of Yucatan, *on March 7, 1922, in pursuance of agreements made in the United States between Tomas Castellanos Acevedo and his associates and officials of the Sisal Sales Corporation, and as a result of the efforts on the part of the said Castellanos and his associates, imposed an additional special tax of 4 cents Mexican per kilo, which with the Mexican Federal surtax of 25 per cent would amount to 5 cents Mexican per kilo (or about 1-1/8 cents U. S. gold per pound), all sisal held by or delivered to the Comision Exportadora de Yucatan being exempted from such tax.*"
>
> * * * * * * *
>
> "This made the total discriminatory taxes in favor of the Comision Exportadora de Yucatan, including the Federal surtax of 25 per cent, amount to 15 cents Mexican per kilo (approximately 3⅜ cents U. S. gold per pound). *The immediate result was to put independent buyers out of business, causing them to close their offices and return to the United States, thus perfecting a complete monopoly in Mexican sisal. Shortly thereafter the Comision Exportadora de Yucatan be-*

gan paying the Yucatan producer 3½¢ per pound, instead of 4 cents per pound for sisal. Sisal was then being sold by the Sisal Sales Corporation in the United States at 6¼ cents Gulf (6½ N. Y.) per pound." (Italics ours.)

The remainder of the petition contains a number of allegations as to transactions which took place subsequent to March 7, 1922, the date upon which the monopoly was complete.

Summary of Argument.

It is the position of the appellees in whose behalf this brief is filed, that it is entirely clear from the express allegations of the petition that the alleged monopoly depended for its existence entirely upon the discriminatory tax laws of the State of Yucatan in favor of Comision Exportadora. That this is true is apparent from the history of the various attempts at monopolization of trade in sisal as set forth in the petition and the reasons for the respective successes and failures of these attempts (see summary, page 6 of this brief). The "unlawful agreement" alleged to have been made by a number of the defendants, in pursuance of which it is claimed the monopoly resulted, contemplated that Castellanos should proceed to Yucatan, Mexico and "cause to be enacted in the Republic of Mexico or in the States of Yucatan and Campeche any laws or regulations necessary to create a monopoly of the sisal produced in said States and such laws and regulations as might be necessary for a reduction of acreage and control of prices" (R. 12). Prior to the enactment of the discriminatory tax laws competition existed and immediately upon the enactment thereof competition ceased (R. 19). The fact that the monopoly was wholly dependent for its existence upon the laws of the State of Yucatan is fully recognized in the opinion of the District Court.

It is manifest that the creation of a monopoly by the laws of a foreign state would not constitute a violation of our anti-trust statutes. *American Banana Co. v. United Fruit Co.*, 213 U. S. 347 (s. c. 160 Fed. 184, 166 Fed. 261).

It would be utterly futile to grant the injunctions prayed for in the petition, for, if granted, it would not affect the discriminatory tax laws of the State of Yucatan by virtue of which the monopoly is alleged to have been created and become effective; nor would they prevent the Comision Exportadora from continuing to sell sisal in the United States through agencies other than the defendants and with other financial support.

ARGUMENT.

I.

The Power of Injunction is properly used only to restrain present wrongs or prevent threatened ones and unless the Petition shows a present or threatened unlawful monopoly at the time it was filed, it was properly dismissed.

In view of the fact that so much of the Government's petition consists of a narrative of past events and situations, and of contracts and arrangements, which had terminated prior to the filing of the petition, we propose at the outset of this discussion to draw attention to the particular monopoly and the particular contracts which are alleged to exist at the time the petition was filed and which the Government is seeking to restrain.

The monopoly of which the Government is making complaint is "the existing restraint and monopolization" (R. 12) which is alleged to have begun on March 7, 1922, immediately upon, and as the direct consequence of certain discriminatory tax laws passed by the State of Yucatan (R. 19). Of course, the Government does not seek to enjoin the foreign government from continuing to enforce these laws, as this would be so obviously absurd. What the Government does ask is, that the defendants be enjoined from continuing to deal with each other and from continuing to carry out the contract dated January 22, 1921, as amended by the supplemental contract dated June 19, 1923. This contract as amended is between Comision Reguladora and Sisal Sales Corporation and provides that the latter shall act as the sales agent of the former. Consideration of this contract will be reserved for a later subdivision of this brief, but it is here to be emphasized that this is the only contract of importance that was in existence at the time the petition was filed and it is the only contract mentioned in the prayer of the petition the carrying out of which the Government is seeking to restrain (R. 23, 24.)

On pages 17 and 18 of the Government's brief there will be found a statement of various acts which the Government claims are unlawful and were participated in by the defendants and upon which the Government's argument for injunction is based. An analysis of these alleged acts in connection with the corresponding allegations of the petition will show that, aside from the contract of December 22, 1921, as amended June 19, 1923, and the alleged conspiracy to bring about the discriminatory tax legislation in Yucatan, the Government is relying upon (1) a certain contract between Sisal Sales Corporation and a steamship company for the transportation of sisal and (2) certain acts which are alleged to have resulted in the pooling of the stocks of sisal acquired by foreclosure by the banks in the United States subsequent to the year 1919 with certain other stocks of sisal.

So far as the transportation contract is concerned, it is specifically alleged in the petition that this contract was dated May 12, 1923, and did not become effective until June 1, 1923 (R. 20), which was more than a year after March 7, 1922, when the monopoly complained of was alleged to have become "complete" (R. 19). Furthermore it specifically appears from the petition that prior to the filing thereof this transportation contract had been cancelled. In the face of these definite allegations showing that this contract could not have had anything to do either with the creation of the alleged monopoly or with the situation existing at the time the petition was filed, it is difficult to see how the Government can seriously argue that any importance whatever should be attached thereto.

With regard to the alleged unlawful pooling agreements, the allegations of the petition state that the stocks of sisal involved were surplus stocks which had accumulated as the result of the after war readjustment and particularly as the result of the increased supply of manila hemp which was available as soon as the excessive war demand was over (R. 8); that the defendant banks acquired the stocks of sisal by foreclosure proceedings in order to recover bank loans made in the course of their banking business (R. 8); that the alleged sale of the stocks of sisal from Eric Corporation to Comision Exportadora was made for "a price equal to all outstanding obligations and liabilities of the Eric Corporation secured by such sisal" (R. 17); that the agreement of sale of this sisal was made on December 22, 1921 (R. 17) at a time when an open market for sisal existed in Yucatan; and that for two and one-half months thereafter "independent buyers continued to purchase" sisal in Yucatan and ceased to purchase as the "immediate result of the discriminatory tax laws of that State" (R. 19). Could anything be more clear from the Government's own statement of the facts than that the defendant banks were doing a legitimate banking business of advancing money on sisal; that the purpose of this sale was not an unlawful one to obtain exorbitant prices or indeed any profit whatever but was merely to recover loans; and that the sale did not result in the alleged existing monopoly but that the latter resulted immediately and directly from the law of the State of Yucatan, which was enacted two and one-half months later? And finally, with reference to the alleged pooling agreements, it definitely appears from the petition that the stocks of sisal affected thereby had been disposed of prior to the filing of the petition and consequently they do not form any part of the situation existing at that time (R. 21). This is recognized in sub-paragraph (*b*) on page 18 of the Government's brief by the phrase "(these stocks later disposed of)".

When, therefore, the various acts specified on pages 17 and 18 of the Government's brief are examined and the allegations of the petition in regard thereto are analyzed, the gist of the matter is this: The only monopoly and the only unlawful agreement which the Government claims existed at the time the petition was filed, is the monopoly which followed the discriminatory tax legislation in Yucatan on March 7, 1922, and the contract between Comision

Exportadora and Sisal Sales Corporation of June 22, 1921, as amended on June 19, 1923.

In this connection it is to be borne in mind that the power of injunction is a power which is used only to restrain present wrongs or prevent threatened ones. This rule is strikingly stated in the opinion by Circuit Judge Buffington, in the case of *United States* v. *United States Steel Corporation,* 223 Fed. 55, 59 [The judges sitting in this case were Circuit Judges Buffington, Hunt, McPherson and Woolley], as follows:

> "Now unlawful restraints of trade are of three kinds, past, present, and future. As to present and future restraints, Congress by section 4 empowered 'the Attorney General to institute proceedings in equity to prevent and restrain such violations,' and to that end invested the courts 'with jurisdiction to prevent and restrain violations of this act'. The jurisdiction here conferred is the chancery power of injunction, a power which is used to restrain present wrongs or prevent threatened ones. This is shown by the act providing even for temporary preliminary restraining orders while the case is being heard. 'The function of an injunction is to afford preventive relief, not to redress alleged wrongs which have been committed already.' (Citing cases.)"

* * * * * * *

And after considering the Powder Case and the Standard Oil Case, Judge Buffington continued:

> "To this we may add that, while the power to dissolve was for the same reason exercised by us in the Powder Case, yet it will be observed there was in that case a refusal to enjoin as to certain defendants, the court saying:
>
> > 'As the only relief we can grant in this proceeding is injunctive, the petition must be dismissed as to any defendant who was not violating the law, or threatening to violate it, when the suit was commenced.'

> Indeed in each of the cases, the injunction was granted, not to enjoin past violations, or because there had been violations in the past, but because such violations were continuing when the bill was filed. It will therefore appear that by this act a comprehensive plan of relief was mapped out, 'to protect trade and commerce against unlawful restraints and monopolies': First, a criminal prosecution by the government under sections 1 and 2 for all violations, past and present; second, an injunction in equity, on complaint of the Attorney General, under section 4, against all present or threatened violations of the act; and, third, a civil suit under section 7 by anyone injured against any violator of this act."

Applying the rule announced in the foregoing opinion to the present case, we reach the conclusion that unless the monopoly which began on March 7, 1922, following the tax legislation in Yucatan on that date, or the contract of June 22, 1921, as amended June 19, 1923, between Comision Exportadora and Sisal Sales Corporation, constitute a violation of the Anti-trust laws, the petition was properly dismissed.

II.

The contract of December 22, 1921, as amended by the contract of June 19, 1923, is not objectionable either under the Sherman Act or under the Wilson Act.

This contract was entered into between the Comision Exportadora and the Sisal Sales Corporation on December 22, 1921, at a time when an open market for sisal existed in Yucatan, and there is nothing in the terms of the contract which constitutes a violation of either the Sherman Act or the Wilson Tariff Act. The reasons which led the Sisal Sales Corporation to enter into this contract are fully stated in the body of the contract itself (R. 37, 38); and thereupon the contract continues by stating the correct standard for the fixing of the prices for Yucatan sisal as follows:

> "There is, in our opinion, but one standard for fixing the price and value of Yucatan sisal, and that is the prices which are ruling from time to time in the markets of the world of such other fibers as are of equal or approximately equal intrinsic value. We refer to Java sisal, East African sisal, New Zealand hemp and Manila hemp of, say, current (Government Grade 'I') quality. It is not fair to the binder-twine consumers of the world, nor to the best interests of the sisal-hemp planters of Yucatan, to endeavor at any time to secure for Yucatan sisal a price in excess of such indicated value. Moreover, it would in our opinion be contrary to the spirit, if not the letter, of American law.
>
> If it is clearly understood and agreed that the foregoing facts and conditions constitute the fundamentals upon which the agreement is based, the undersigned Sisal Sales Corporation (hereinafter referred to as the 'corporation') is willing to enter into the following agreement with Comision Reguladora del Mercado de Henequen (hereinafter referred to as the 'comision'), an institution created by act of the Legislature of the State of Yucatan, Mexico, dated July 16, 1921:
>
> The comision will appoint the corporation the general agent of the comision for the purposes hereinafter set forth." (R. 38, 39.)

The provision of the contract for the setting of price limits by the Comision Exportadora is as follows:

> "Sales made by the Corporation shall be for account and risk of the Comision and shall be based upon price limits to be given by the Comision, which agrees that the prices which it may fix from time to time shall not be higher than those asked by other sellers of sisal nor higher than a fair and reasonable parity of price for sisal based upon its intrinsic value as compared with the prices of other fibers." (R. 39.)

It will be seen that there is an express stipulation in the contract guarding against the asking of unfair prices for sisal by the Comision Exportadora, and that the standard for fixing prices agreed to in the contract is well within the standard approved by Judge Hough in *United States v. Pan-American Commission, supra* (page 7). There is no allegation anywhere in the petition that the contract of December 22, 1921, has not been carried out in good faith in accordance with its terms.

The contract of June 19, 1923 (Exhibit "I" annexed to the petition) merely modifies the contract of December 22, 1921, in respect to the compensation of the Sisal Sales Corporation and provides for the loaning of money by the Sisal Sales Corporation to the Comision Exportadora for the purpose of developing the sisal industry in Yucatan.

The intent and effect of the contract of December 22, 1921, was to appoint the Sisal Sales Corporation the exclusive selling agent in the United States of the Comision Reguladora. It is well established that a contract appointing an exclusive selling agent is not objectionable under the Anti-Trust Laws of the United States.

> *Virtue* v. *Creamery Package Mfg. Co.*, 1910, 227 U. S. 8.

In this case, which was an action to recover treble damages under the Sherman Act, Mr. Justice McKenna said at page 37:

> "The Owatonna Company did nothing more in its contract with the Creamery Package Manufacturing Company than to make that Company its exclusive sales agent, and this was no violation of law."

See also—

> *Baran* v. *Goodyear Tire & Rubber Co.*, Dist. Court, Southern Dist. of New York, 1919, 256 Fed. 571;
>
> *Whitwell* v. *Continental Tobacco Co.*, C. C. A., 8th Circuit, 1903, 125 Fed. 454;

American Sea Green Slate Co. v. *O'Halloran*, C. C. A., 2nd Circuit, 1915, 229 Fed. 77;
Locker v. *American Tobacco Co.*, C. C. A., 2nd Circuit, 1914, 218 Fed. 447.

As a matter of fact, Congress has expressly sanctioned the establishment in this country of exclusive sales agencies for the products of foreign producers.

Section 802 of the Act of Sept. 8, 1916, Chapter 463 (Federal Statutes Anno., 1918, Supp. p. 872), provided:

> "That if any article produced in a foreign country is imported into the United States under any agreement, understanding, or condition that the importer thereof or any other person in the United States shall not use, purchase, or deal in, or shall be restricted in his using, purchasing, or dealing in, the articles of any other person, there shall be levied, collected, and paid thereon, in addition to the duty otherwise imposed by law, a special duty equal to double the amount of such duty: *Provided, That the above shall not be interpreted to prevent the establishing in this country on the part of a foreign producer of an exclusive agency for the sale in the United States of the products of said foreign producer or merchant*, nor to prevent such exclusive agent from agreeing not to use, purchase, or deal in the article of any other person, but the proviso shall not be construed to exempt from the provisions of this section any article imported by such exclusive agent if such agent is required by the foreign producer or if it is agreed between such agent and such foreign producer that any agreement, understanding or condition set out in this section shall be imposed by such agent upon the sale or other disposition of such article to any person in the United States (39 Stat. L. 799)." (Italics ours.)

The provisions of the contract of December 22, 1921, and the contract of June 19, 1923, with regard to the advancing of money by the Sisal Sales Corporation to the Comision Exportadora are not objectionable under either the Sherman or the Wilson Act. In this connection we refer to the following statement of Judge Hough in the Pan-American Commission case, *supra*:

> "The claim of conspiracy rests on one of two propositions; at least I can discover no other even suggested by the Government. Either anyone who lends money to a monopolist becomes a partner or conspirator with him by the act of loan. * * * The first proposition is not, I apprehend, relied on, and it is bad law anyhow."

III.

It is apparent on the face of the petition that the monopoly alleged to have existed at the time of the filing of the petition was caused solely by a governmental act of the State of Yucatan.

A large part of the Government's brief is devoted to the endeavor to draw the attention of the Court away from the discriminatory tax laws of the State of Yucatan as the source of the alleged monopoly and to the contention that the anti-trust laws have been violated by reason of certain alleged contracts and acts done in the United States. Turning, however, from the Government's brief to the petition itself, we find a most extraordinary case presented. When the allegations of the petition are analyzed and reduced to their lowest terms, it appears that what the Government really asserts is that three banking institutions in this country conspired with each other and with a foreign government to bring about the enactment of tax laws by that government which created a monopoly in the foreign country.

At the very outset of Article VI of the petition which contains the first words about "the existing restraint and monopolization" (R. 12), after a paragraph of general allegations, it is alleged that in the course of a series of conferences held in New York City "it was agreed that the defendants, Tomas Castellanos Acevedo . . . should proceed to Yucatan, Mexico, and arrange with the persons in control of the Yucatan State Government, and others, for the formation of an organization under the control of the Yucatan State Government, to engage in the purchase, sale, and export of sisal produced in Yucatan, and *to cause to be enacted in the Republic of Mexico, or in the States of Yucatan and Campeche, any laws or regulations necessary to create* a monopoly of the sisal produced in said states, and such laws and regulations as might be necessary for a reduction of acreage and control of prices." (Italics ours, R. 12.)

Furthermore, it is alleged that a law of Yucatan was enacted on or about July 16, 1921, putting the old Comision Reguladora del Mercado de Henequen into liquidation and establishing a new Comision Reguladora del Mercado de Henequen, and that this law was enacted by the State of Yucatan "largely through the activities of Tomas Castellanos Acevedo and his associates in carrying out his unlawful agreement with the other defendants in the United States, heretofore referred to" (R. 13); that as a result of the same alleged unlawful agreement made by the defendants in the United States at the series of conferences above mentioned the State of Yucatan enacted a law on December 13, 1921, imposing certain taxes on the production of sisal and a further law on December 14, 1921, making certain restrictions upon the production of sisal (R. 15, 16); and that on January 2, 1922, an additional law was enacted by the Government of Yucatan granting exemption to Comision Exportadora from payment of the production tax imposed by the law of December 13, 1921, thus for the first time making a discrimination in the taxes in favor of the Comision Exportadora (R. 18).

Even after the enactment of these laws by the State of Yucatan a monopoly had not been created, for it definitely appears that after January 2, 1922, "independent buyers continued to purchase" sisal, paying the taxes which had become discriminatory on January 2, 1922 (R. 19). It was not until March 7, 1922, that the monopoly resulted by reason of an additional discriminatory tax alleged as follows:

> "* * * the State Government of Yucatan, on March 7, 1922, in pursuance of agreements made in the United State between Tomas Castellanos Acevedo and his associates and officials of the Sisal Sales Corporation, and as a result of the efforts on the part of the said Castellanos and his associates, imposed an additional special tax of 4 cents Mexican per kilo, which with the Mexican Federal surtax of 25 per cent would amount to 5 cents Mexican per kilo (or about 1 1/8 cents U. S. gold per pound), all sisal held by or delivered to the Comision Exportadora de Yucatan being exempted from such tax." (R. 19.)

The result of the last mentioned legislation is alleged as follows:

> "The immediate result was to put independent buyers out of business, causing them to close their offices and return to the United States, thus perfecting a complete monopoly in Mexican sisal." (R. 19.)

It is, therefore, manifest on the face of the petition that the monopoly alleged to be existing at the time the petition was filed, was caused solely by legislation of the State of Yucatan, and that to remove the laws, proclamations and decrees of the State of Yucatan and the Republic of Mexico from the petition is to remove the very life and breath of the petition itself.

IV.

The act of persuading a foreign government to enact a statute is not within the scope of either the Sherman Act or the Wilson Act.

A case strikingly similar to the present case, as set forth in the petition, is *American Banana Company* v. *United*

Fruit Company, Circuit Court, Southern District of New York, 1908, 160 Fed. 184, affirmed by the Circuit Court of Appeals for the Second Circuit, 1908, 166 Fed. 261, affirmed by the Supreme Court, 213 U. S. 347.

This was an action for treble damages under Section 7 of the Sherman Act. The defendant filed an answer to the complaint but at the start of the trial, after the jury was sworn, it made a motion to dismiss the complaint on the ground that it did not state facts sufficient to constitute a cause of action. The action was on the law side and the motion was made under the New York practice. The facts of the complaint assumed by Judge Hough, for the purposes of the motion to dismiss them before the Court, to be well pleaded or capable of judicial cognizance were much more favorable to the plaintiff than the allegations in the petition herein and, with the Court's permission, we will summarize them as follows:

(1) In June, 1904, there existed in the United States a combination in restraint of trade or commerce in bananas with foreign nations and the defendant was an active party in and to such combination.

(2) At the same time the defendant was either monopolizing or attempting to monopolize trade or commerce in bananas with foreign nations.

(3) In June, 1904, one, McConnell, was in peaceable possession of a plantation situated within the boundaries of the Republic of Panama.

(4) In that month and year the plaintiff acquired McConnell's rights to his plantation and also a concession from the Republic of Panama to construct a railroad to bring the produce of the plantation to tidewater.

(5) Later, in 1904, the Executive Department of the Government of Costa Rica, acting through officials (either military or civil) and soldiers in its service, forcibly ejected

the plaintiff from the plantation and seized its personal property.

(6) *Such ejection and seizure was perpetrated by the Costa Rican officials and soldiers at the instigation, suggestion and procurement of the defendant, and for the purpose of preventing the plaintiff from harvesting bananas and transporting them to the United States in competition with the defendant's imports.*

(7) The conduct of these officials and soldiers was approved and ratified by the Government of Costa Rica.

(8) Before the transfer of the plantation from McConnell to the plaintiff, an action had been brought in the courts of Costa Rica, seeking to establish title to the plantation in one, Astua, a citizen of Costa Rica, and in such suit a judgment was rendered, after the transfer, declaring the title to be in Astua.

(9) *Such proceedings were taken at the instigation or for the benefit of the defendant with the purpose of preventing the plaintiff from gathering bananas and exporting them to the United States in competition with the defendant, and shortly after the decree Astua's title was transferred to a corporation allied with and controlled by the defendant and identified with the unlawful combination and monopoly.*

(10) The above proceedings of the civil or military officials of Costa Rica and of the soldiers of that Government and of the court thereof, were taken in pursuance of an asserted right of sovereignty over the plantation, which assertion of sovereignty was irreconcilable with delimitation of boundaries between Panama and Costa Rica made by President Loubet in pursuance of an international arbitration agreement.

(11) Despite protests from the Department of State of the United States made to the Government of the Repub-

lic of Panama, Costa Rica maintained *de facto* jurisdiction and sovereignty over the plantation.

(12) By reason of the facts stated above, the plaintiff has never exported, gathered, cut or harvested any bananas and has never engaged in trade or commerce in bananas.

(13) Both Costa Rica and Panama were sovereign, independent nations.

(14) For the purpose of preventing competition in the exportation of bananas from Costa Rica and Panama, the defendant, by outbidding all other competitors, had secured long term contracts with most, if not all, of the purchasers of bananas in that region.

(15) The defendant had also caused to be established a transportation line between ports of the United States and Costa Rica and Panama, which transportation line refused to accept merchandise from the plaintiff or charged the plaintiff higher rates for its service than it charged other persons and corporations similarly situated.

(16) The defendant had sought to cripple and embarrass the plaintiff in its attempted business operations by enticing away its employees and threatening to discharge from its own service such of its workmen as became interested financially in the plaintiff's enterprise.

Judge Hough, under the above assumptions, dismissed the complaint.

Mr. Justice Holmes, in delivering the affirming opinion of the Supreme Court, said at page 357:

> "Words having universal scope, such as 'Every contract in restraint of trade,' 'Every person who shall monopolize,' etc., will be taken as a matter of course to mean only everyone subject to such legislation, not all that the legislator subsequently may be able to catch. In the case of the present statute the improbability of the United States attempting to make acts done in Panama or Costa Rica criminal is obvious, yet the law

> begins by making criminal the acts for which it gives a right to sue. We think it entirely plain that what the defendant did in Panama or Costa Rica is not within the scope of the statute so far as the present suit is concerned. Other objections of a serious nature are urged but need not be discussed."

And at page 250:

> "The fundamental reason why persuading a sovereign power to do this or that cannot be a tort is not that the sovereign cannot be joined as a defendant or because it must be assumed to be acting lawfully. * * * The fundamental reason is that it is a contradiction in terms to say that within its jurisdiction it is unlawful to persuade a sovereign power to bring about a result that it declares by its conduct to be desirable and proper. It does not, and foreign courts cannot, admit that the influences were improper or the results bad. It makes the persuasion lawful by its own act. The very meaning of sovereignty is that the decree of the sovereign makes law."

And at page 359:

> "Giving to this complaint every reasonable latitude of interpretation we are of opinion that it alleges no case under the act of Congress and discloses nothing that we can suppose to have been a tort where it was done. *A conspiracy in this country to do acts in another jurisdiction does not draw to itself those acts and make them unlawful, if they are permitted by the local law.*" (Italics ours.)

V.

This Court will not and cannot investigate, examine and enquire into the laws of the State of Yucatan or the reasons for the enactment of the same.

Judge Hough, in deciding the *American Banana* case in the District Court (160 Fed. 184), said at page 188:

> "But neither Costa Rica nor its officers could be brought into our courts, for reasons fully and forcibly set forth by Wallace, *J.*, in Underhill *v.* Hernandez, 65 Fed. 581, 13 C. C. A., 51, 38 L. R. A. 405, affirmed 168 U. S. 250, 18 Sup. Ct. 83, 42 L. Ed. 456.
>
> No opinion is here expressed as to whether the cause of action be local or not, or whether within the reasonable interpretation of section 7 of the act of seizure was 'anything forbidden or declared to be unlawful' by the Sherman Act. The case last cited renders the plaintiff's claim untenable by civil action in any American court, and on grounds of the highest public policy. It is impossible to adjudicate this matter without sitting in judgment on the right of Costa Rica to do what was done. The defendant's malice, intention, or expected profit is no more important than are similar considerations in an action for false arrest—before the illegality of the arrest be demonstrated. There, as here, it is of the essence of the court's jurisdictional power to determine the validity and legality of the governmental action out of which the suit grows, and this court has no power to sit in judgment on the validity or legality of the act of any sovereign independent nation."

In the Circuit Court of Appeals (166 Fed. 261) the opinion was as follows:

> "Now the only theory upon which the plaintiff can be awarded damages against the defendant is that it is responsible for unlawful acts instigated by it. It cannot be held responsible for procuring that to be done by authority of the government of Costa Rica which was lawful. Consequently this court is called upon to investigate the lawfulness of acts done under the authority of a foreign independent state. But this court cannot undertake any such investigation. The acts complained of were adopted by the government of a sovereign state in its political capacity and in the exercise of its *de facto* sovereignty. The question of their legality or illegality cannot be determined by the courts of another country."

* * * * * * *

"Upon principle and authority, it follows that Costa Rica is entitled to immunity from any investigation of its sovereign acts by this court. The plaintiff, however, asserts that this immunity is only an immunity from suit which has no bearing upon the defendant's liability. But, as we have seen, the immunity is far broader than this. The validity of an act adopted by a sovereign state cannot be inquired into at all—directly or collaterally—by the courts of another state. Relief must be sought in the courts of the former state or through diplomatic channels.

It is further urged that the Costa Rican government should be treated as the agent of the defendant, and that the defendant should be held responsible as principal for its acts. But the relation of a government acting in its political capacity to a person who furnishes the information upon which it acts cannot, from the very nature of things, be that of principal and agent. The early case of Rafael *v.* Verelst, 2 Wm. Black, 1055, cited by the plaintiff, does not sustain any such proposition. The very point of that case was that the Nabob who seized the plaintiff was not acting as sovereign, but contrary to his own inclination—as 'a mere machine, an instrument and engine of the defendant.' In the present case, although instigated by the defendant, there is nothing to show that the Costa Rican government failed to act upon its own responsibility as a sovereign state, or that it ever professed to act in behalf of the defendant.

Upon similar principles, there is no ground for contending that the defendant and the government of Costa Rica were joint tort-feasors. That relation, too, is wholly inconsistent with the relation of a sovereign government acting in its political capacity—as the government of Costa Rica did—to an informer, no matter how malicious the latter might be."

In the Supreme Court of the United States, Justice Holmes said, referring to the point we are now considering:

"For again, not only were the acts of the defendant in Panama or Costa Rica not within the Sherman Act, but they were not torts by the law of the place and therefore were not torts at all, however contrary to the ethical and economic postulates of that statute. The substance of the complaint is that, the plantation being within the *de facto* jurisdiction of Costa Rica, that state took and keeps possession of it by virtue of its sovereign power. But a seizure by a state is not a thing that can be complained of elsewhere in the courts. Underhill *v*. Hernandez, 168 U. S. 250."

There is abundant additional authority supporting the proposition set forth at the beginning of this subdivision V of this brief. To quote at length and to comment upon the numerous cases would extend the brief beyond proper limits and it is, therefore, deemed only necessary to refer to the following citations:

Underhill v. *Hernandez,* C. C. A., 2nd Circuit, 1895, 65 Fed. 577.

Oetjen v. *Central Leather Company,* 1918, 246 U. S. 297.

Ricaud v. *American Metal Company, Ltd.,* 1918, 246 U. S. 304.

Hewitt v. *Speyer,* C. C. A., 2nd Circuit, 1918, 250 Fed. 367.

Earn Line Steamship Company v. *Sutherland Steamship Company,* Dist. Court, Southern Dist., New York, 1918, 254 Fed. 126.

The Adriatic, C. C. A., 3rd Circuit, 1919, 258 Fed. 902.

The Florence H., Dist. Court, Southern District of New York, 1918, 248 Fed. 1012.

Wulfsohn v. *Russian Socialist Federated Soviet Republic,* 1923, 234 N. Y. 372.

VI.

The American Banana Case cannot be distinguished from the present case.

The Government has attempted in subdivision III, page 22 of its brief, to distinguish the *American Banana Case, supra,* on several grounds.

In the first place, it is said that the *Banana* case was an action sounding in tort for damages, whereas the *Sisal* case was an action for equitable relief, and that in the former case the damages resulted entirely from the act of the foreign government, whereas in the latter case there are alleged restrictive and monopolistic acts in the United States as well as abroad. The "restrictive and monopolistic acts in the United States" are evidently those referred to on pages 17 and 18 of the Government's brief which have already been dealt with under Subdivisions I, II and III of this argument. So far as the point that the action in the *Banana* case was one in tort for damages, brought under § 7 of the Sherman Act, whereas the action in this case was for an injunction, brought under § 4 of the Sherman Act, it is only necessary to point out that § 7 provides:

> "Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any Circuit Court of the United States * * *"

and § 4 provides:

> "The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act, and it shall be the duty of the several district attorneys of the United States in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. * * *"

Under the terms of the statute the plaintiff in the *American Banana* case had exactly the same light of action for treble damages as the Government has for an injunction in the present case.

The second ground of distinction urged by the Government is as follows:

> "2. The conspiracy in the *Banana* case was aimed at production only and no intent to affect, or direct effect upon, interstate commerce was shown, while in the *Sisal* case the conspiracy was aimed at restraint upon purchase, transportation, storage and sale—every essential element of commercial traffic and intercourse."

We confess that we see no point whatever in this ground of distinction. It illustrates the lengths which the Government would have this Court go, and the hair-splitting distinctions which would be required to find a difference between the *Sisal* case and the *Banana* case. If there were any point whatever in this contention of the Government, we may refer to sub-paragraphs 6 and 12, pages 29 and 30 of this brief, which are taken almost verbatim from the opinion of District Judge Hough, and from which it appears that in the *Banana* case the acts complained of were done and procured by the defendant "for the purpose of preventing the plaintiff from harvesting bananas and transporting them to the United States in competition with the defendant's imports" and that as a result of said acts "the plaintiff has never exported, gathered, cut or harvested any bananas and has never engaged in trade or commerce in bananas." It thus appears that the *Banana* case was decided upon the express assumption that commerce in bananas with the United States was restrained by the acts complained of.

The last ground of distinction urged in the Government's brief is that the conspiracy in the *Banana* case was entered into in Costa Rica, whereas in the *Sisal* case the alleged conspiracy was entered into in New York. It is submitted that the whole opinion in the *Banana* case bears out the contention that, where the act complained of is participated in and depends for its results upon an act of a foreign government, an alleged conspiracy to bring about that act would not be contrary to our laws wherever it might have taken place. That it was assumed in the *Banana* case that the alleged conspiracy did take place in the United States may be seen from sub-paragraph 1, page 28 of this brief, and from the following quotation from the opinion of Mr. Justice Holmes:

> "A conspiracy in this country to do acts in another jurisdiction does not draw to itself those acts and make them unlawful if they are permitted by the local law."

The Government's brief then proceeds to cite various cases in which the *Banana* case has been distinguished by this court. However, these cases are clearly distinguishable from the *Banana* case and from the present case, because in none of the cases cited did the question of the effect of foreign governmental action arise.

In Subdivision IV, page 29, of the Government's brief, it is further attempted to distinguish the *Banana* case on the ground that the Wilson Act was not referred to in that case, and the contention is made that the construction of the Wilson Tariff Act is still an open question. In this connection the brief refers to an opinion by Attorney General Wickersham, 31 Opinions of the Attorney General, 545, and it is stated that the Attorney General "held that, although *a combination of German potash growers protected by German law* does not in itself violate the Act, its corporate representative in this country is acting unlawfully." In striking contrast to this statement in the Government's brief, we draw attention to the following language from the opinion of the Attorney General, pages 553, 554:

> "Under the Act," (that is the German Act previously mentioned in the opinion) "while no one could sell in a foreign market potash at a price below that

> fixed by the board of apportionment, yet free competition was allowed beyond that price, while such competition is entirely destroyed in the agreement in question. This fact alone, without going into the details of the agreement, is sufficient to show beyond question that *the combination is not protected by the German Act* and is such as the Act of Congress condemns, and the only question is whether or not the combination or agreement is made by or between persons or corporations, either of whom is engaged in importing potash into the United States." (Italics ours.)

The above quoted language shows clearly that the Attorney General's opinion is based on the assumption that the German combination is not protected by, or a creation of, the German statute under consideration, and the clear inference of the language is that, if it were so protected, the opinion of the Attorney General would be otherwise.

VII.

If the defendant should be enjoined from further carrying out the contract of December 22, 1921, a monopoly would still continue to exist, and there would be nothing to prevent the Comision Exportadora from doing business through some other agency with the financial support of other banks either in the United States or foreign countries. A court of equity will not grant an injunction which will be futile to bring about the relief sought, and will only work hardship upon the parties affected thereby.

The concluding paragraph of subdivision III, page 29, of the Government's brief, is as follows:

> "The conspiracy had three principal elements, i. e., American financial support, a monopolistic buying agency in Mexico, and a monopolistic selling agency in America. Discriminatory legislation barred all but the Exportadora from the Mexican market, but even

it, with that aid, could not have been an efficient monopolizer there without the American money advanced by the Sisal Sales Corporation, the American monopolistic distributor."

This paragraph states the entire substance of the Government's position. The first element mentioned, "American financial support", is in no way unlawful as is shown by the opinion of Judge Hough in the *Pan-American* Case, *Supra* (p. 9 of this brief). As to the second element mentioned, "a monopolistic buying agency in Mexico", this can only refer to Comision Exportadora which enjoys the monopoly by virtue of the discriminatory tax law of Yucatan of March 7, 1922 and we understand that the Government does not question that the existence of this monopolistic buying agency is subject to the decree of our courts. The third element, "a monopolistic selling agency in America", is Sisal Sales Corporation whose operations are conducted under the contract of December 22, 1921 as amended, which contract has already been dealt with and shown to be lawful under subdivision II of this argument.

In the second sentence of the paragraph quoted, it is recognized that the discriminatory legislation of Yucatan is at the foundation of the monopoly and the inference is that this legislation is not subject to review by our courts, but the contention is that the monopoly was made efficient by money advanced by Sisal Sales Corporation and that that Corporation should be enjoined from making further advances.

Now it is perfectly obvious that, even if the injunction prayed for by the Government were granted in the present case, there would be nothing to prevent the Mexican monopoly from going to Canada, England, or even to financial institutions in the United States other than the defendants, for financial support. The Government does not contend that it is unlawful for the defendants to make loans to the Comision Exportadora except for the reason that they are alleged to have "conspired", and it must follow that any bank in the United States other than the defendants could lawfully give the required financial support to make the Comision Exportadora "an efficient monopolizer".

Obviously the Government would not contend that the Comision Exportadora should be enjoined from doing business in the United States simply because of the fact that it enjoys a monopoly created by statute in Yucatan. The Government admits that this court cannot by injunction effect the very thing which creates the present monopoly, and for this court to issue an injunction against the defendants would simply result in the Comision Exportadora continuing to do business through other agencies and with new financial support.

Such a result would be patently unfair to the defendant banks and upon general principles of equity it is submitted that this court should not issue an injunction which will be ineffective to bring about the desired relief and which will simply prevent the defendants from continuing to carry on a lawful and proper portion of their business.

The opinion of the District Court is correct and the decree appealed from should be affirmed.

Respectfully submitted,

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Office Supreme Court, U. S.
FILED
MAR 5 1927
WM. R. STANSBURY
CLERK

No. 200

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1926

THE UNITED STATES OF AMERICA, Appellant

v.

SISAL SALES CORPORATION, et al.

Appeal from the District Court of the United States for the Southern District of New York

BRIEF FOR HANSON & ORTH, CHARLES D. ORTH, MICHAEL J. SMITH AND CHARLES D. ORTH, JR.

APPEAL PRINTING CO., 32 THAMES ST., NEW YORK CITY

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ARGUMENT

SUMMARY

I. A conspiracy to effect a monopoly by means of enactments, proclamations and decrees of a sovereign foreign government is not within the scope of the Anti-trust Laws of the United States. The decision in American Banana Co. *v.* United Fruit Co., 213 U. S. 347, is conclusive on this point 25

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

No. 200

THE UNITED STATES OF AMERICA, APPELLANT,

v.

SISAL SALES CORPORATION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR HANSON & ORTH, CHARLES D. ORTH, MICHAEL J. SMITH AND CHARLES D. ORTH, JR.

Previous Opinion in the Present Case.

The opinion of Augustus N. Hand, District Judge, in the Court below, the United States District Court for the Southern District of New York, appears at page 52 of the Record.

Grounds of Jurisdiction.

The order in the United States District Court for the Southern District of New York to be reviewed herein was filed June 30, 1925 (R. 55). By a petition filed July 24, 1925, the Government prayed for an appeal to this Court (R. 57), and by an order of the Court below filed July 24, 1925, such appeal was allowed (R. 58). Such appeal was allowed pursuant to the Act of February 11, 1903, c. 544, 32 Stat. 823, as amended June 25, 1910, c. 428, 36 Stat. 854, known as the Expediting Act, left in force by Section 238 of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938.

Statement of the Case.

(a) Preliminary Statement—Sole Question Presented.

This case comes to this Court under the following circumstances:

The Government filed a petition in the District Court for the Southern District of New York (R. 1) praying (R. 23) in substance for an injunction to restrain an alleged monopoly in *sisal* created by a series of enactments, proclamations and decrees of *sovereign foreign governments*, namely, the Republic of Mexico and its constituent State of Yucatan.

The defendants thereupon made a motion in the Court below to dismiss such petition on the grounds set forth in the petition (R. 51, 52), raising in substance the sole question as to the effect of a foreign government monopoly which is hereinafter further considered.

This was the question considered by the Court below and was the question upon which its decision was based (R. 53). The opinion of the Court on this point was as follows (R. 53):

> "The question is whether the defendants now should be restrained from dealing with the Sisal Sales Corporation and its principal Comision Ex-

portadora de Yucatan, because the latter is a monopoly created by the Government of Yucatan and protected by such favorable and discriminatory tax laws of the State that it is enabled to control the American market and fix prices in sisal. I think it manifest from the decision of the Supreme Court in American Banana Co. *v.* United Fruit Company, 213 U. S. 347, that *an agreement to procure monopolistic legislation in another country cannot be treated as unlawful by our courts.* The Government attempts to draw a distinction between the American Banana case because that was an action by an individual to recover treble damages for injuries arising out of a conspiracy to monopolize the banana trade. One of the wrongful acts consisted of a seizure by the Costa Rica Government of a banana plantation belonging to the American Banana Company, at the alleged instigation of the defendant United Fruit Company. The Supreme Court held the cause of action invalid and said 'a conspiracy in this country to do acts in another jurisdiction does not draw to itself those acts and make them unlawful, if they are permitted by the local law.'

"If acts 'permitted by the local law' could not be inquired into for the purpose of awarding damages to a person injured, I do not follow the reasoning which regards them as a basis for a suit by the Government to restrain the parties connected with them as conspirators. It is true enough that an act, in itself innocent, may be a step in carrying out an unlawful conspiracy, but *when, as here, nothing remains of the conspiracy that is not dependent upon the claimed unlawfulness of such act the whole case must fall.*

"An injunction to restrain dealings with the Comision Exportadora de Yucatan and the Sisal Sales Corporation would be quite *futile*, so far as the public interest is concerned. Anyone else could

> surely deal with them and the successors to the alleged unlawful conspirators would have to be at once treated as legitimate traders and go scatheless." (Italics ours.)

In view of the circumstance that the brief of the Government argues at great length a long succession of questions of law which seem to have no pertinency to the single point raised by the motion to dismiss or the present appeal, and particularly in view of the fact that as to by far the greater part of the argument contained in the Government's brief there is no dispute between the parties, we shall at first attempt to briefly differentiate between the single question which we conceive to be in dispute between the parties and the many other propositions of law argued in the Government's brief and the soundness of which we do not for a moment question. While the motion below was based upon the grounds of general insufficiency and lack of equity and gravamen of the motion was the third specification, which is as follows (R. 52):

> "It appears on the face of the petition herein that it is impossible to adjudicate or make any judgment or decree in this action, except a judgment or decree dismissing the petition herein, without examining, inquiring into and investigating the laws, proclamations, and decrees of independent and sovereign foreign States, to wit, the Republic of the United States of Mexico and the State of Yucatan, and without investigating, examining, inquiring into, passing upon and judging the lawfulness, validity or legality of said laws, proclamations, and decrees, and of acts done by or under the authority of such sovereign and independent States and the laws, proclamations, and decrees thereof."

It is our contention that the peition conclusively shows that *the only alleged monopoly or restraint of trade therein set forth arises exclusively out of the laws, proclamations and decrees of the Republic of the United States of Mexico and the State of Yucatan;* that the only alleged conspiracy to monopolize or restrain trade is the alleged conspiracy to cause the Republic of the United States of Mexico and the State of Yucatan to enact and promulgate laws, proclamations and decrees which shall effectuate such monopoly and restraint of trade; and that the only effects and results of said monopoly and restraint of trade alleged to have taken place in the United States or elsewhere are effects and results exclusively attributable to the operation of the said laws, proclamations and decrees of the Republic of Mexico and the State of Yucatan. This is the theory upon which the motion was made and is the only point urged upon this Court.

If it be true, as we contend, that repeated adjudications by the United States Courts have established the salutary rule that American Courts will not inquire into the legality or validity of the enactments, proclamations and decrees of sovereign foreign States and Governments for the reason that principles of comity and international good faith lead to a very natural presumption that the enactments, proclamations and decrees of sovereign foreign Governments are entered into in good faith and for proper and lawful purposes; and if it be true that no decision favorable to the plaintiff in the present injunction suit can be rendered upon the state of facts alleged in the petition without inquiring into the legality and validity of certain specific enactments, proclamations and decrees of the Republic of Mexico and the State of Yucatan which are set forth in detail in the said petition and without examining into the good faith with which said enactments, proclamations and decrees were made and the purposes for which they were promulgated; if these things be true, then the petition of necessity had to be dismissed and such dismissal must be affirmed by this Court. It is to establish these simple premises that the present brief is submitted.

(b) Analysis of Government's Brief.

As the issue is thus narrowed down to a very simple one, we wish to eliminate from the case at the outset the many elementary principles of law argued at such length in the Government's brief but which have no bearing whatsoever upon the contention which we do in fact now advance and about which there is no substantial difference of opinion between the moving defendants and the Government.

Thus, we do not question the soundness of the proposition of law in Point I, page 17, of the Government's brief that a conspiracy to monopolize importation carried into effect by overt acts committed in the United States and abroad is unlawful; but such proposition has no application to the question raised by the motion to dismiss which involves not an ordinary monopoly created by private individuals but a monopoly created by a foreign government. While one would suppose from the brief argument of this point, which consists merely of assertion rather than any logical reasoning, that this point is not seriously advanced, nevertheless the Government's brief returns to this proposition in its Point IV, page 29, in discussing the Wilson Act. However, the simple answer to this point is exactly the same as the answer with respect to the Sherman Act, namely, that that statute does not and does not even purport to apply to a monopoly such as the one described in the petition created by a sovereign foreign government. Furthermore, the obvious has already been affirmed by a Court of great authority in *Fosburgh* v. *California & Hawaiian Sugar Refining Co.* (1923, C. C. A. 9), 291 Fed. 29, where it held, at page 32:

> "The Wilson Act, as amended (U. S. Comp. Stat. §8831) is not more comprehensive in its scope than the Sherman Act, and serves only to make the law more specific in its application, as it relates to foreign commerce."

Finally, it may be noted that the House Committee on Interstate and Foreign Commerce, which conducted a very extensive series of Hearings on the matter of foreign government monopolies last year and rendered a very complete Report on the subject, referred to more fully hereafter, in discussing all of the possible remedies for the situation involved did not even suggest the possibility that such foreign government monopolies could be attacked under any of the anti-trust laws and came to the conclusion that it would not suggest any remedial legislation at the present time. Here then is direct evidence from the legislature itself that the anti-trust laws are not conceived to be intended to apply to foreign government monopolies. The words of the House Report are as follows (p. 15):

> "*The committee, for reasons heretofore appearing, has not at this time suggested remedial legislation since it believes that a frank discussion of these questions and the development of a better understanding of the consequences of the intrusion of governmental price controls in international trade may secure an abandonment of the practices.* If, however, it develops that the American public cannot be protected against a repetition of its experiences in the past by resort to methods mentioned

> above, the committee will have no hesitation in reopening the question. Accordingly, the committee makes this preliminary report with the purpose of making further report to the House later if the occasion should require it." (Italics ours.)

Point II, page 18, of the Government's brief is entirely misleading in attempting to give the impression that the lower Court in this case held that an unlawful conspiracy is rendered immune from suit on the ground that a particular one of the overt acts on which its success depends was lawful in itself. Of course, the general proposition referred to in such point was not disputed by the lower Court and is not in dispute here. That proposition was expressly considered by the lower Court, and its inapplicability to the case of a *foreign government* monopoly involved here was amply demonstrated in the opinion of the lower Court when it said (R. 54):

> "It is true enough that an act, in itself innocent, may be a step in carrying out an unlawful conspiracy, but *when, as here, nothing remains of the conspiracy that is not dependent upon the claimed unlawfulness of such act the whole case must fall.*" (Italics ours.)

In other words, in this case the sovereign acts of the foreign government creating the monopoly were the heart and soul of the monopoly described in the petition and not just one of many other equally vital elements; and without the actions of the foreign government nothing remained of the monopoly or any alleged conspiracy in this case.

Our point is not that Congress has no power to restrain or prohibit conspiracies to monopolize and restrain the commerce of the United States, both domestic and foreign; nor do we contend that the Sherman Act and the Wilson Act are so narrow in their scope as not to affect the combinations entered into either in foreign countries or with the citizens of foreign countries. What we do contend, however, is that *when a monopoly or restraint of trade is alleged to be the direct result of a series of enactments, proclamations and decrees of sovereign foreign Governments, that our Courts for reasons which have been explicitly and repeatedly stated by this Court, will not inquire into the validity or legality of such laws; that neither the Sherman Act nor the Wilson Act were intended to in any way affect monopolies and restraints of trade thus created by enactments, proclamations and decrees of foreign sovereign Governments; and that such enactments, proclamations and decrees, being conclusively presumed to be lawful and proper, there can be nothing unlawful in a 'conspiracy' or agreement to cause such sovereign foreign Governments to pass and promulgate these enactments, proclamations and decrees.*

We have discussed this question of the issue now before the Court at some length in the preliminary portion of this brief because we believe that the brief of the Government, while admirable in the sense that it sets forth with great precision and acumen the general body of law developed by the Courts in construing the commerce clause of the United States Constitution and in construing and applying the long since familiar decisions under the Sherman Anti-Trust Law and the Wilson Act, contains practically no argument at all on the one vital question presented by the motion to dismiss. The only semblance of an argument is contained in Point III, page 22, where there is a superficial attempt to distinguish the *American Banana Co. case* upon which the decision in the lower Court was based and where the fundamental considerations involved in the *American Banana Co.* case are entirely ignored. The alleged limitations of the doctrine of the banana case are shown merely by an academic review of the later cases of this Court which not only in no way limit the applicability of the *American Banana Co.* case to the facts of this case involving a foreign government monopoly, but in some of such decisions clearly affirm the doctrine of the *American Banana Co.* case as may be observed by a mere inspection of the reference to the cases such as *Ricaud* v. *American Metal Company*, 246 U. S. 304, 309.

The circumstance of the absence of any substantial argument on the point concerning the fact of the foreign government monopoly is all the more striking when one compares the petition, scarcely a page of which does not contain some reference to an enactment, promulgation or decree of the Republic of Mexico or the State of Yucatan, with the voluminous brief submitted by the Government which only refers to these enactments, promulgations and decrees in the most casual and incidental fashion. This striking discrepancy between the *facts* alleged in the petition and the *law* argued in the brief is by no means inadvertent. The sufficiency of the petition, however, must be determined by the facts alleged therein, and these facts, as we maintain, conclusively demonstrate that the only conspiracy alleged was a conspiracy to bring about a monopoly in a particular manner, namely, by inducing the sovereign Governments of the Republic of Mexico and the State of Yucatan to pass certain laws, proclamations and decrees containing discriminatory taxes, limiting production and in other ways creating and maintaining the monopoly. The only monopoly or restraint of trade alleged to exist is a monopoly and restraint of trade flowing immediately and exclusively from these enactments, promulgations and decrees of the Republic of Mexico and the State of Yucatan. No amount of circumlocution or generalization, no amount of characterization about monopolies, conspiracies, and restraints of trade, can alter the fact that the petition itself discloses a conspiracy addressed entirely to the sovereign Governments of Mexico and Yucatan and to a monopoly effected exclusively by means of perfectly valid and lawful enactments, promulgations and decrees in these two sovereign foreign Governments.

(c) Prior Foreign Government Monopolies from 1915 to 1921 as Alleged in the Petition.

While the defendants, Hanson & Orth, and the respective partners of this well-known firm of sisal brokers who have been engaged in the business of dealing in sisal for a great many years, are not alleged to have had anything to do with the present situation until May, 1921, the first twenty-two pages of the petition (R., 1-11) are devoted to a statement of certain prior monopolies in Mexican sisal which are quite important in connection with the motion and the present appeal, as it appears on the face of the very petition itself that all of these prior monopolies and alleged restraints of trade arose out of a series of laws passed by the *Republic of Mexico or the Yucatan State Government.*

Thus, under the title "First successful monopolization of trade and commerce of sisal in the United States," the petition sets forth an arrangement made between the Pan-American Commission Corporation, organized by Sol Wexler and Lynn H. Dinkins, with the old Comision Reguladora del Mercado de Henequen, which was reorganized prior to November 13th, 1915, by a decree promulgated by the military Governor of Yucatan (R., 5, Petition, p. 10). The terms of this decree are fully set forth, and the effect thereof was to establish what is said to be the first monopoly of Mexican sisal. This arrangement between the Pan-American Commission Corporation and the Comision Reguladora, pursuant to a decree of the military Governor of Yucatan, is alleged to have resulted in a great increase in the price of Mexican sisal during the war, and this condition apparently existed up until some time in August, 1919 (R., 7, Petition, p. 14). An action brought under the anti-trust laws of the United States for injunctive relief was dismissed by Judge Hough for lack of actuality and without prejudice in *U. S.* v. *Pan-American Commission Corporation,* 261 Fed. 229.

The petition then proceeds to allege that in the latter part of 1919 the price of sisal declined, due to the fact that manufacturers were substituting other fibers and due to general post-war conditions, and that as a result a large surplus of sisal and other fiber had accumulated. As the defendant banks herein had made large advances on a quantity of this accumulated sisal, it is alleged that in the latter part of 1919 (R., 8, Petition, p. 16):

> "The interested banks, realizing that a period of readjustment was at hand, refused further advances. Thus, there being no further outlet for Mexican sisal under the old arrangement, the *Yucatan State Government declared a free and open market.*" (Italics ours.)

The petition then proceeds to set forth the organization of the defendant Eric Corporation by the defendant banks as a selling agency of the large accumulation of sisal, which then amounted to about 400,000 bales. There was in addition, according to the petition, a large surplus of sisal in Yucatan owned by the Comision Reguladora and amounting to approximately 250,000 bales. This surplus stock of the Comision Reguladora was purchased by the

Eric Corporation, the contract of purchase and sale being dated January 23rd, 1920.

It is to be noted that during the period from the latter part of 1919 up to January 23rd, 1920, the free and open market which had been declared by the Yucatan State Government remained in full force and effect.

The petition then sets forth the formation of the Comision Monetaria and pages 19-21 of the petition (R., 10-11) state the negotiations with the Mexican Government with respect to sisal, the plan "to prevail upon the Mexican Government to impose a Federal tax, and thus insure an artificial elevation of the price of sisal," and the bringing about of another and second monopoly in the following specific manner (R., 10-11, Petition, pp. 20-1):

> "The Eric Corporation agreed to advance the Comision Monetaria such sums of money as were necessary to purchase sisal, holding such sisal as collateral security. The contract also contemplated that the Mexican Government would so arrange all Federal export taxes that the Comision Monetaria and the Eric Corporation would be exempt. The Comision Monetaria proposed to purchase sisal at a fixed price of 5½ cents per pound, although the Eric Corporation suggested a price of 6 cents per pound.
>
> "On or about April 23, 1921, the Comision Monetaria began to purchase sisal at 5½ cents per pound, which represented an increase of 1½ cents per pound over the price which had prevailed for several months previous.
>
> "The Mexican Government had, on March 19, 1921, proclaimed a decree increasing the export tax from 2 cents Mexican (1 cent U. S. gold) to 6 cents Mexican (3 cents U. S. gold) per kilo (*i. e.*, 2.2 pounds). The sisal purchased by the Comision Monetaria was shipped in the name and for the ac-

> count of the Eric Corporation. Upon the entry of the Comision Monetaria into the sisal market in Yucatan, *all independent purchasers suspended operations because of the closed market thus brought about by the imposition of the said Federal tax on them*, which tax was discriminatory in favor of the Comision Monetaria and the Eric Corporation." (Italics ours.)

Thus we see that the second alleged monopoly was entirely due to the action of the Mexican Government in the proclamation of a decree increasing the export tax on Mexican sisal and discriminating in favor of the Comision Monetaria. This was the result of (R., 10, Petition, p. 19)

> "Negotiations (which) were carried on between the said Glenn (financial agent of The Equitable Trust Company) and the finance minister of the Mexican Government, de la Huerta."

It is alleged at pages 21 and 22 of the petition (R., 11-12) that the Comision Monetaria collapsed in July, 1921, and that (R., 11, Petition, p. 22):

> "On August 23, 1921, *the said additional Federal export tax of 4 cents Mexican (2 cents U. S. gold) per kilo was repealed*, over the protest of the Eric Corporation. *Again there existed an open market in Yucatan, which continued until the establishment of the present monopoly as hereinafter described.*" (Italics ours.)

Here ends the preliminary portion of the complaint, which plainly shows that in the period from 1915 to August 23rd, 1921, conditions of free trade or of monopoly in Mexican sisal were regulated exclusively by enactments and proclamations of either the sovereign State of Yucatan or the sovereign Republic of Mexico.

The history of the sisal monopoly, just referred to, shows without a doubt that the monopoly of sisal was in each case due to the acts of foreign governments and that the monopoly has operated successfully without the help or intervention of anybody in the United States and without any of the acts complained of in the petition. Such history is therefore significant in showing that the sisal monopoly being caused by the actions of foreign sovereign governments, exists irrespective of the acts of any of the defendants alone in the present case. In fact, as will appear hereafter, if anything the acts which were attacked by the petition were designed to assist trade in sisal under the conditions which existed owing to the actions of the foreign governments creating the monopoly with respect thereto.

(d) Present Foreign Government Monopoly.

The present conspiracy to monopolize and restrain trade also relates to and was carried out exclusively by means of enactments, proclamations and decrees of either the Republic of Mexico or the State of Yucatan.

The gravamen of the complaint appears on page 23 of the petition (R., 12). It is alleged that all of the defendants named in the petition conspired and combined together to effect a particular and specific purpose. This purpose is as follows (R., 12, Petition, p. 23):

> "In pursuance of their unlawful purpose, the defendants, Charles D. Orth, Alvin W. Krech, Lynn H. Dinkins, F. W. Black, J. A. Beatson, Frederick T. Walker, Michael J. Smith, Tomas Castellanos Acevedo, and others, held a series of conferences in New York City, and elsewhere in the United States, of which it was agreed that the defendant,

> Tomas Castellanos Acevedo (now attorney in fact for the said defendant, Comision Exportadora de Yucatan, formerly Comision Reguladora del Mercado de Henequen) should proceed to Yucatan, Mexico, *and arrange with the persons in control of the Yucatan State Government, and others, for the formation of an organization under the control of the Yucatan State Government, to engage in the purchase, sale, and export of sisal produced in Yucatan, and to cause to be enacted in the Republic of Mexico, or in the States of Yucatan and Campeche, any laws or regulations necessary to create a monopoly of the sisal produced in said states, and such laws and regulations as might be necessary for a reduction of acreage and control of prices.*" (Italics ours.)

The manner in which this alleged conspiracy was carried out is also specifically alleged and it consists in the inducing of the State of Yucatan and the Republic of Mexico to pass a series of laws which are set forth in the petition with the utmost particularity. The first step was to liquidate the old Comision Reguladora. This was done by a law of the State of Yucatan enacted on July 16th, 1921 (R., 13, Petition, p. 25). This law also provided a moratorium of ten years as to the old Comision Reguladora.

It is then alleged that during this period, when there was, of course, still a free and open market for Mexican sisal, the Eric Corporation entered into a formal contract with the firm of Hanson & Orth, dated September 12th, 1921, by which that firm became the general managers of the business of the Eric Corporation in disposing of its sisal for an annual salary and a commission of 1 per cent. The supplemental contract with Hanson & Orth of June 19th, 1923, and the later contract between Hanson & Orth and the Sisal Sales Corporation, dated April 1st, 1921, merely supplement and continue the original arrangement. Hanson & Orth were to perform the usual services of fiber brokers in the sale of the sisal at prices subject to the approval and under the exclusive control of the company and they were to follow a general policy fixed and approved by the directors of the corporation.

The Sisal Sales Corporation, which was the new company organized as a selling agency for the banks, was formed on November 5th, 1921, and a contract was entered into between the Sisal Sales Corporation and the new Comision Reguladora on December 22nd, 1921 (Exhibit G, R., 37-40, Petition, pp. 70-5).

The terms of this agreement show a sincere effort on the part of all the American citizens in any way involved in this matter to make an arrangement which should guarantee fair dealing to the American consumers. It was obvious, as had already been held by Judge HOUGH in the *Pan-American Commission Corporation* case, that the price levels of Mexican sisal had a normal and natural relation to the prices of other fibers and particularly manila hemp which was and is so largely used in connection with the manufacture of rope. Accordingly the contract between the Sisal Corporation and the new Comision Reguladora provided (R., 38, Petition, p. 71):

> "On the other hand, in cooperating in any measures that have that object in view, due specifications must be made for the avoidance of the succession of errors which have led to the present condition. The chief of these has been the endeavor of the old Comision Reguladora, as it existed from 1915 and up until recently, to exact undue prices for Yucatan sisal. *There is, in our opinion, but one standard for fixing the price and value of Yucatan sisal, and that is the prices which are ruling from*

> *time to time in the markets of the world of such other fibers as are of equal or approximately equal intrinsic value. We refer to Java sisal, East African sisal, New Zealand hemp and Manila hemp of, say, current (Government Grade "I") quality."* (Italics ours.)

This effort was made in sincere good faith by the great banking institutions which are defendants in this case and the responsible American citizens of high standing who have cooperated with the banks in this matter. Moreover, it is a fact that it is well known to the Government that the provisions of the contract just quoted were adhered to in the most scrupulous manner from the time of the making of the contract to the time of the petition, and it is a fact that it is a matter of common knowledge that the prices of Mexican sisal for at least three years prior to the time of the petition were entirely moderate and thoroughly satisfactory to the independent buyers of Mexican sisal in the United States.

In all the allegations of the petition with reference to the contracts between the Eric Corporation and Hanson & Orth and between the Sisal Sales Corporation and the new Comision Reguladora there is not the slightest claim or intimation of monopoly or restraint of competition. The petition does divulge, however, a series of laws and decrees passed shortly thereafter in Mexico which, according to the very letter of the petition, establish the alleged monopoly.

Thus it is said that on December 13th, 1921, the State of Yucatan enacted a law imposing a production tax of 8 centavos (4 cents U. S. gold) per kilo. As to the operation of this law it is alleged (R., 15, Petition, pp. 29-30):

> "This tax, with a Mexican Federal surtax of 50 per cent., charged on all State taxes, made the total

> tax 12 cents Mexican (6 cents U. S. gold) per kilo. This tax was to be collected by the Yucatan State Treasurer, and paid to the new Comision Reguladora del Mercado de Henequen to be used by the latter in the regulation of the sisal market."

It is further alleged that another law was passed by the State of Yucatan on December 14th, 1921, "restricting the production of sisal from 15 to 50 per cent. less than the quantity then being produced." An English translation of this law is annexed to the petition as Exhibit F (R., 36).

These laws, however, of December 13th, 1921, and December 14th, 1921, did not produce a condition of monopoly.

On January 2nd, 1922, it is said that the State of Yucatan by decree changed the name of the new Comision Reguladora to "Comision Exportadora de Yucatan" and that (R., 18, Petition, p. 35):

> "On the same day the *State of Yuactan enacted a law exempting all sisal sold to the Comision Exportadora de Yucatan from the payment of a special state tax* imposed by the law of December 13, 1921." (Italics ours.)

It is further alleged that the Mexican Federal Government by a decree which became effective January 1st, 1922, reduced the Federal surtax on all state taxes from 50 per cent. to 25 per cent., thus making the discriminatory tax in favor of the Comision Exportadora amount to 8 cents Mexican plus 2 cents Mexican per kilo, or a total of 10 cents Mexican per kilo, which is equal to about 2¼ cents U. S. gold per pound.

The final step and the one effective thing which according to the petition itself was the immediate producing cause of the monopoly, was a further Act of the State

Government of Yucatan passed on March 7th, 1922, which imposed an additional special tax of 4 cents Mexican per kilo. The allegation with reference to this Act of March 7th, 1922, and its immediate result, is so important that we quote it in full (R., 18-19, Petition, pp. 36-37):

> "*Even after the Comision Exportadora de Yucatan began purchasing sisal on January 2, 1922, independent buyers continued to purchase,* paying the 2¼ cents U. S. gold per pound discriminatory tax. In order to completely insure against the further purchase of sisal in Yucatan by independent buyers, the State Government of Yucatan, on March 7, 1922, in pursuance of agreements made in the United States between Tomas Castellanos Acevedo and his associates and officials of the Sisal Sales Corporation, and as a result of the efforts on the part of the said Castellanos and his associates, imposed an additional special tax of 4 cents Mexican per kilo, which with the Mexican Federal surtax of 25 per cent. would amount to 5 cents Mexican per kilo (or about 1⅛ cents U. S. gold per pound), all sisal held by or delivered to the Comision Exportadora de Yucatan being exempted from such tax. An English translation of this law is annexed hereto, marked 'Exhibit H,' and prayed to be considered a part hereof.
>
> "This made the total discriminatory taxes in favor of the Comision Exportadora de Yucatan, including the Federal surtax of 25 per cent., amount to 15 cents Mexican per kilo (approximately 3⅜ cents U. S. gold per pound). *The immediate result was to put independent buyers out of business,* causing them to close their offices and return to the United States, thus perfecting a complete monopoly in Mexican sisal. Shortly thereafter the Comision Exportadora de Yucatan began paying the Yucatan producer 3½ cents per pound, instead of 4 cents per pound for sisal. Sisal was then being sold by

> the Sisal Sales Corporation in the United States at 6¼ cents Gulf (6½ N. Y.) per pound." (Italics ours.)

Having thus alleged a conspiracy and combination to "arrange with persons in control of the Yucatan State Government" and others "to cause to be enacted in the Republic of Mexico or in the States of Yucatan and Campeche any laws or regulations necessary to create a monopoly of the sisal produced in said states"; and having alleged the carrying out of this conspiracy by the law of the State of Yucatan, dated July 16th, 1921, the law of the State of Yucatan, dated December 13th, 1921, the law of the State of Yucatan, dated December 14th, 1921, the decree of the State of Yucatan dated January 2nd, 1922, the decree of the Mexican Federal Government which became effective on January 1st, 1922, and, finally, the law of the State Government of Yucatan dated March 7th, 1922, by means of which enactments and decrees the monopoly is said to have been made effective, the balance of the petition is devoted to a statement of the results which were brought about by this particular alleged monopoly, in this particular alleged manner. These results were, of course, the sale through the Sisal Sales Corporation of the old stocks of sisal which had accumulated up to August, 1919, and thereafter, and the sale of all this sisal and fresh sisal, in addition, at prices arbitrarily fixed by the alleged monopolies.

(e) General Observations.

Before discussing the law which we believe to be applicable to this case, it will probably be helpful to again consider the exact differences between the contentions of the moving parties-respondents and those of the Government.

From the analysis just above made of the allegations of the petition it is our claim that the only conspiracy which is alleged is a conspiracy to cause to be enacted certain laws, proclamations and decrees which the sovereign Governments of the State of Yucatan and the Republic of Mexico had a perfectly lawful right to pass; that it has been the policy of our Courts under no circumstances to inquire into the legality, validity or good faith of such enactments, proclamations and decrees of a sovereign foreign government and that as the passing of these laws is consequently conclusively presumed to be lawful and proper it cannot be said that the defendants are guilty of any wrong, even if they did combine together and conspire to induce the doing of a lawful thing.

(f) The Utter Futility of Granting Any Injunctive Relief in This Case.

Another point of the greatest importance in an equity case of this kind should be mentioned, and it is summed up as follows in the opinion of the Court below (R., 54):

> "*An injunction* to restrain dealings with the Comision Exportadora de Yucatan and the Sisal Sales Corporation *would be quite futile*, so far as the public interest is concerned. Anyone else could surely deal with them and the successors to the alleged unlawful conspirators would have to be at once treated as legitimate traders and go scatheless." (Italics ours.)

The position of the Court below was of course quite proper. Even if it be assumed that these particular defendants, because of their alleged implication in connection with the passage of the long series of laws, proclamations and decrees of the sovereign State of Yucatan and the sovereign Republic of Mexico which have resulted in the alleged monopoly and restraint of trade, are subject to the Court's decree, what possible good will come of a decree enjoining these particular defendants from acting as agents or otherwise cooperating with the officials of the State of Yucatan and the Republic of Mexico in carrying out the policies which have been declared by those Governments to be for the welfare and general benefit of Mexican citizens?

There is no law of this country now on the statute books by which the Court could enjoin any one or several of the millions of other American citizens and citizens of foreign countries who would at once step forward and willingly undertake the performance of the agency provisions of the contracts referred to in the petition.

Equity will not do a vain thing. And it seems apparent at the very outset that any decree in accordance with the prayer of the petition herein would be no more than a a mere futile gesticulation which, in result, could in no way affect the existence and continuance of the alleged monopoly and restraint of trade, but would serve the sole purpose of irritating sovereign foreign Governments with whom the United States is now upon friendly relations.

In view of the avowed policy of this Government to bend every effort to induce our own agriculturists to combine and cooperate together for their own collective benefit and in view of the many statutory provisions explicitly exempting our farmers and agriculturists from those laws which govern combinations and monopolies by others, is it possible that a decision in support of the petition herein can have any other effect upon the citizens and Government of the Republic of Mexico and the State of Yucatan than one of irritation and discomfiture?

ARGUMENT.

Summary.

The argument advanced in this brief reduces itself to an extremely simple one concerning the effect of a *foreign government* monopoly. The petition alleges a monopoly existing as the direct result of a series of enactments, proclamations and decrees of sovereign foreign governments without which nothing remains of the alleged conspiracy in this case. (1) A conspiracy to effect monopoly by means of enactments, proclamations and decrees of a sovereign *foreign government* is not within the scope of the anti-trust laws of the United States, and the decision in the *American Banana Co.* case, hereinafter referred to, is conclusive on this point. (2) Moreover, the question raised by the existence of the *foreign government* monopoly in this case is a broad *international, economic* and *political* one, and in so far as the United States conceives itself to be injured by such monopoly, *the remedy,* under our present nationalistic form of political government and under the constitutional form of government of the United States, *should not be attempted by the courts* but by the executive and legislative departments of the United States.

FIRST POINT.

A conspiracy to effect a monopoly by means of enactments, proclamations and decrees of a sovereign foreign government is not within the scope of the anti-trust laws of the United States. The decision in American Banana Co. v. United Fruit Co., 213 U. S. 347, is conclusive on this point.

The principles governing the decision by this Court in the *American Banana Co.* case are identical with those controlling here. The conspiracy of American citizens in the United States was carried out by means of a series of acts of soldiers and officials of Costa Rica which were plain acts of sovereignty. There were the same allegations of intent and combination to monopolize and the defendant was alleged to have effected the monopoly by means of acts of the most fraudulent and improper character, consummated by soldiers and officials of Costa Rica.

The action was for treble damages under Section 7 of the Sherman Act, thus involving monopoly and conspiracy to restrain trade identical with the requirements of the statute in reference to the present suit for injunctive relief.

An examination of the argument of counsel for the plaintiff which is summarized at pages 348-351 of the report of the *American Banana Co.* case discloses that the argument there advanced is identical with that urged in the Government's brief herein.

Thus, citing *Gibbons* v. *Ogden*, 9 Wheat. 1 and *United States* v. *Knight*, 156 U. S. 1, it was argued (p. 351):

> "The statute applies to acts done in a foreign country. The objection that the acts complained of were done abroad is entitled to no weight. The

> parties to the suit are American citizens. The commerce restrained by defendant's acts was foreign commerce of the United States. Congress has full power to legislate in respect to that and has exercised the power in this statute."

And again (p. 349):

> "The acts complained of were done in violation of an express statute of the United States. Costa Rica cannot give immunity to defendant for this offense, nor can exceptions be read into the Sherman Act not expressed in the act itself."

This Court, however, flatly repudiated this argument in every particular and held that the complaint had been properly dismissed. Mr. Justice HOLMES proceeded to state the grounds of the decision as follows (pp. 358-9):

> "The fundamental reason why persuading a sovereign power to do this or that cannot be a tort is not that the sovereign cannot be joined as a defendant or because it must be assumed to be acting lawfully. The intervention of parties who had a right knowingly to produce the harmful result between the defendant and the harm has been thought to be a non-conductor and to bar responsibility, *Allen* v. *Flood* (1898) A. C. 1, 121, 151, etc., but it is not clear that this is always true, for instance, in the case of the privileged repetition of a slander, *Elmer* v. *Fessenden*, 151 Massachusetts, 359, 362, 363, or the malicious and unjustified persuasion to discharge from employment, *Moran* v. *Dunphy*, 177 Massachusetts, 485, 487. *The fundamental reason is that it is a contradiction in terms to say that within its jurisdiction it is unlawful to persuade a sovereign power to bring about a result that it declares by its conduct to be desirable and proper. It does not, and foreign courts cannot, admit that the influences were improper or the results bad. It makes*

> *the persuasion lawful by its own act. The very meaning of sovereignty is that the decree of the sovereign makes law.* See *Kwananakoa* v. *Polybank*, 205 U. S. 349, 353. In the case of private persons it consistently may assert the freedom of the immediate parties to an injury and yet declare that certain persuasions addressed to them are wrong. See *Angle* v. *Chicago, St. Paul, Minneapolis & Omaha Ry. Co.*, 151 U. S. 1, 16-21; *Fletcher* v. *Peck*, 6 Cranch 87, 130, 131. * * *
>
> "The acts of the soldiers and officials of Costa Rica are not alleged to have been without the consent of the government and must be taken to have been done by its order. It ratified them, at all events, and adopts and keeps the possession taken by them; *O'Reilly de Camara* v. *Brooke*, 209 U. S. 45, 52; *The Paquet Habana*, 189 U. S. 453, 465; *Dempsey* v. *Chambers*, 154 Massachusetts 330, 332. The injuries to the plantation and supplies seem to have been the direct effect of the acts of the Costa Rican government, which is holding them under an adverse claim of right. The claim for them must fall with the claim for being deprived of the use and profits of the place. As to the buying at a high price, etc., it is enough to say that we have no ground for supposing that it was unlawful in the countries where the purchases were made. Giving to this complaint every reasonable latitude of interpretation we are of opinion that it alleges no case under the act of Congress and discloses nothing that we can suppose to have been a tort where it was done. *A conspiracy in this country to do acts in another jurisdiction does not draw to itself those acts and make them unlawful, if they are permitted by the local law.*" (Italics ours.)

The decision thus solemnly made by this Court in no sense created new doctrine, but merely reaffirmed a thoroughly well settled and fundamental principle of international comity. Indeed, it is obvious that international relations would be greatly prejudiced and disrupted were the Courts of one nation permitted to inquire into the validity and legality of the laws of another sovereign state. It is also significant that every Federal judge participating in the *American Banana Co.* case ruled against the plaintiff. Judge HOUGH, then District Judge of the Southern District of New York, so ruled (160 Fed. 184); the three Judges of the Circuit Court of Appeals of the Second Circuit (LACOMBE, COXE and NOYES) so ruled (166 Fed. 261); and there was not a single dissenting vote in this Court. A careful scrutiny of the opinions of these distinguished jurists will indicate beyond possibility of serious doubt that the principles therein stated govern the present case.

The only difference between this case and the *American Banana Co.* case is that here the various enactments, proclamations and decrees of the Republic of Mexico and the State of Yucatan were openly made in obvious good faith and for the salutary purpose of affording some protection to Mexican agriculturists, whereas in the *American Banana Co.* case there was every indication of fraudulent and improper acts of violence.

As to questions with respect to such laws of a sister nation, which may be considered to adversely affect the economic or other interests of American citizens, the Court of Appeals of the State of New York recently said in *Wulfsohn* v. *Russian Republic*, 234 N. Y., 372, 376:

> "The question is a political one, not confided to the courts but to another department of government. Whenever an act done by a sovereign in his sovereign character is questioned it becomes a matter of negotiation, or of reprisals or of war."

As the Court may wish to inquire further into the question of the reasons underlying the rule above stated we have collected some of the leading cases which are as follows:

> *Underhill* v. *Hernandez*, 65 Fed. 577, aff'd. 168 U. S. 251;
> *Oetjen* v. *Central Leather Co.*, 246 U. S. 304;
> *Ricaud* v. *American Metal Co.* 246 U. S. 297;
> *Hewitt* v. *Speyer*, 250 Fed. 367;
> *The Invincible*, Fed Cas. No. 7054;
> *Earn Line S. S. Co.* v. *Sutherland S. S. Co.*, 254 Fed. 126;
> *The Adriatic*, 258 Fed. 902.

The English decisions are to the same effect:

> *Duke of Brunswick* v. *King of Hanover*, 2 H. L. Cases, 1;
> *Secretary of State* v. *Kamachee*, 13 Moore (Privy Council), 22;
> *Buron* v. *Denman*, 2 Exc. 167;
> *Doss* v. *Secretary of State*, L. R. 19 Eq. 509.

The attempted distinction between the *American Banana Co.* case and the present case, which appears in Point III, page 22, of the Government's brief, falls of its own weight. It is apparent from a mere reading of that case and the petition in the present case that the two cases are entirely parallel and that there is no distinction whatsoever between them.

The method of argumentation pursued by the Government in this connection is the famiilar and well-worn but entirely fallacious one of setting up certain alleged differences in fact which, even if true, have no bearing on the application of the fundamental principle of the *American Banana Co.* case.

The first attempted distinction is between a tort action or an action for treble damages under Section 7 of the Sherman Act, which was the section under which the complaint in the *American Banana Co.* case was drawn, on the one hand, and Section 4 of the Sherman Act, which covers proceedings in equity for injunctive relief, on the other hand. There is in fact no possible basis for any such distinction, as all the sections of the Sherman Act patently apply to the same sort of conspiracy, contract or combination to monopolize or restrain domestic or foreign commerce.

The second attempted distinction is between a conspiracy aimed at production only and a conspiracy aimed at other essential elements of interstate commerce. The fundamental principle of the *American Banana Co.* case, concerning the lawfulness of the acts of a sovereign foreign government including the lawfulness of a foreign government monopoly, is, however, equally applicable to this case.

The third alleged distinction is between a conspiracy in a foreign country and a conspiracy in this country. This distinction attempts to introduce elements which have no relevancy whatsoever to the essential question involved in this case, as to the effect of the foreign government monopoly. Not only were the monopoly and the acts relating thereto in the foreign country the heart and soul of the transaction attacked by the petition in this case, but the assumption that the *American Banana Co.* case does not apply to a conspiracy in this country is entirely erroneous. This is completely demonstrated by the following statement of Mr. Justice HOLMES in the *American Banana Co.* case:

> "A conspiracy in this country to do acts in another jurisdiction does not draw to itself those acts and make them unlawful, if they are permitted by the local law."

In conclusion, it may be said that the significant and vital portion of the opinion by this Court in the *American Banana Co.* case, just above quoted, is not discussed with any substance in the Government's brief or at all aside from the casual reference at page 20, although it is the very heart and soul of the decision and it is the particular portion thereof which makes the *American Banana Co.* case and this case as alike as two peas in a pod.

SECOND POINT.

The question raised by the existence of the foreign government monopoly in this case is a broad international, economic and political one, and in so far as the United States conceives itself to be injured by such monopoly, the remedy, under the constitutional form of government of the United States, should not be attempted by the Courts but by the executive and legislative departments.

We have thus far argued the question involved on this appeal from a purely technical and legalistic standpoint. We should not feel, however, that we had performed our full duty to the Court and to the parties whom we represent should we fail to briefly discuss a much more fundamental and far-reaching proposition which is necessarily involved. While the Government brief would make it appear that the case has little or no bearing upon the acts of sovereign foreign governments and states, the true situation as it appears to us necessarily involves international relations and international controversies. This is in point of fact the most serious side of the situation presented to this Court in the present record. That the Government appreciates this to be the case is forcibly demonstrated by the discussion of the German Government monopoly in potash on pages 30-32, inclusive, of the Government brief.

Not infrequently have the courts, and particularly this Court, been called upon to determine momentous questions involving fundamental principles of a social, economic or political nature in connection with which it must be proper, as appears by the reference in the Government brief to the German potash monopoly, to refer to the well-known and commonly understood facts bearing upon the situation or question involved.

A. Government monopolies common today.

The foreign government monopoly of the kind involved in this case is only one of the many government monoplies that exist today, and the existence of such monopolies and the likelihood of their increase has created an international, economic and political problem, which is now the subject of public discussion and upon which a representative *committee of the United States Congress* has already taken a position of watchful waiting, further referred to below.

The monopoly involved in this case happens to be a monopoly in sisal created by sovereign state governments in Yucatan and Mexico.

This government monopoly of sisal was investigated by the Committee on Interstate and Foreign Commerce of the House of Representatives, 69th Congress, First Session, in the Committee's hearings on H. Res. 59. The printed report of these hearings constitutes a government document published in 1926 (hereinafted referred to as the "Hearings"). The resolution under which these hearings were conducted reads as follows (Hearings, p. 1):

> "*Resolved*, That the Committee on Interstate and Foreign Commerce be, and it is hereby, authorized and empowered to investigate, by subcommittee or otherwise, the means and methods of the control of production and exportation of crude rubber, coffee, silk, nitrates, potash, quinine, iodine, tin, sisal, quicksilver, pulp wood, and other important raw materials, and their effects upon the commerce of the United States, both as to supply and to price, and to report to the House its findings and recommendations thereon; said committee shall have leave to report at any time on the matters herein stated in one or more reports."

As indicated in such resolution, the hearings revealed that there exist today many foreign government monopolies of exactly the same character as the sisal monopoly involved in the present case, and it is of the greatest importance to note that such monopolies have been created by some of the greatest and most powerful independent sovereign states in the world. Thus government monopolies exist with respect to

(1) Rubber, created by Great Britain (Hearings, pp. 7, 20).

(2) Potash, created by France and Germany (Hearings, p. 31).

(3) Coffee, created by the State of São Paulo in Brazil (Hearings, p. 23).

(4) Nitrates, created by Chile (Hearings, p. 30).

(5) Iodine, created by Chile (Hearings, p. 31).

(6) Long staple cotton, created by Egypt (Hearings, p. 27).

(7) Camphor, created by Japan (Hearings, p. 32).

(8) Silk, at times created by Japan (Hearings, p. 29).

Aside from the long list just presented apparently the end of these government monopolies is not yet. This is brought out in the Preliminary Report on crude rubber, coffee, etc., dated March 13, 1926, made by the Committee on Interstate and Foreign Commerce pursuant to H. Res. 59, and entitled "House Calendar No. 132, 69th Congress, 1st Session, Report No. 555" (hereinafter referred to as the "House Report"). That report points out that the tendency to further develop such government monopolies is illustrated by the government of New Zealand in connection with kauri gum, which is an important ingredient in varnishes, the monopoly in which went into effect last year (House Report, p. 2). Moreover (House Report, p. 4):

> "There are some 70 other vital commodities which could be controlled by action of foreign Governments and which the United States does not produce in sufficient quantities to satisfy its requirements."

To further illustrate the state of the present important government monopolies the following table has been prepared showing the important products and countries which are involved in such government monopolies.

Commodity	*Where Produced*	*Government*	*Monopoly Plan*	*Monopoly Method*
(1) Rubber	Borneo, Sumatra, Ceylon, Malayasia, New Guinea	British	Stevenson Plan (Brit. Gov.) applying to all Brit. Malay and Ceylon	Prohibitive export tax on all rubber shipped in excess of a fixed "allowance"
(2) Potash	Germany France	German French	Government monopoly	French and German Gov. monopolies act in concord to form a "monopolistic unit"
(3) Tin	Brit. Malayasia Dutch E. Indies Bolivia	British Dutch Bolivian	Alleged political or private monopolistic control in all three places	Malay states place prohibitive tax on all exports to other than Brit. ports. Holland exercises Gov. ownership and restricted production
(4) Mercury	Italy Spain	Italian Spanish	No monopoly. Production controlled by Gov.	Italy places no restriction on exports. No monopolistic policy in Spain in spite of ability to exert one.
(5) Quinine	Java	Dutch	Combination between Javanese Planters & Dutch Mfgrs. controlling price on 90% of production	Stabilization of production and prices.
(6) Quebracho	Argentina	Argentine	"La Forestal"	Private Co. controlling 50% of production
(7) Coffee	Sao Paulo	Brazilian	"Permanent Institute in Defense of Coffee"	Gov. finance and purchase of coffee which is held for good market. Taxes
(8) Nitrates	Chile	Chilean	"Nitrate Producers Ass'n" of which two American companies are not members	20% export tax. Industry under Brit. financial and Chilean political control
(9) Iodine	Chile	Chilean	"Combinacion de Yodo"	Combination operates under Gov. deed or contract and controls production
(10) Sisal	Yucatan	Mexican	"Asociacion Co-operativa de Henequeneros de Yucatan"	Planters forced to sell to Gov. monopoly thru prohibition taxes
(11) Grain Cotton Tobacco	United States	United States	"McNary-Haugen Farm Relief Bill"	Equalization Tax

As indicated in such table, the tendency to create these government monopolies has become so great that even the United States itself has made a very determined effort to create one by the recent McNary-Haugen Bill (Senate Bill 4808), which, no matter what intelligent and informed people may think thereof, has nevertheless passed both Houses of the United States Congress and has possibility either in its present or some similar form of becoming law in this country in the future. The McNary-Haugen Bill in substance attempts to creat a monopoly with respect to cotton, corn, rice, swine, tobacco and wheat very similar to that involved in the present case. The character of the bill in this connection is clearly set forth in the veto message of the President, where he speaks as follows:

> "The bill upholds as ideals of American farming the men who grow cotton, corn, rice, swine, tobacco or wheat, and nothing else.
>
> * * *
>
> "Clearly this legislation involves governmental fixing of prices. It gives the proposed Federal board almost unlimited authority to fix prices on the designated commodities. This is price fixing, furthermore, on some of the nation's basic foods and materials. Nothing is more certain than that such price fixing would upset the normal exchange relationships existing in the open market and that it would finally have to be extended to cover a multitude of other goods and services. Government price fixing, once started, has alike no justice and no end. It is an economic folly from which this country has every right to be spared.
>
> * * *
>
> "It is not so long since the government was spending vast sums and through the Department of Justice exerting every effort to break up com-

> binations that were raising the cost of living to a point conceived to be excessive. This bill, if it accomplishes its purpose, will raise the price of the specified agricultural commodities to the highest possible point and in doing so that board will operate without any restraints imposed by the anti-trust laws. The granting of any such arbitrary power to a government board is to run counter to our traditions, the philosophy of our government, the spirit of our institutions and all principles of equity.
>
> * * *
>
> "Several of our foreign markets have agriculture of their own to protect and they have laws in force which may be applied to dumping and we may expect reprisals from them against dumping agricultural products which will even more diminish our foreign markets.
>
> "The bill is essentially a price-fixing bill.
>
> * * *
>
> "While the government is not directly buying or selling these commodities, it must under this bill let contracts for others to do so and name therein the terms upon which they shall buy and sell. No matter how disguised, this in plain terms is government buying and selling of commodities through agents."

The significance of the various data which have been referred to lies in this fact, namely, that the monopoly involved in the present case exists by virtue not of a combination between a number of private individuals, which is the kind of combination aimed at by our anti-trust laws, but in the natural fact of the territorial location of the product involved, which gives the particular sovereign government controlling such territory the legal power to create a monopoly with respect to such product. This is clearly brought out by the following description of the character of the government monopolies contained in the House Report (p. 2):

> "All of the controls specifically referred to have certain common characteristics in that—
>
> "(a) *They are all confined to commodities where the preponderating production lies in the country mentioned.* For example, the British possessions produce 69 per cent. of the world's rubber, Brazil 65 per cent. of the world's coffee, and Chile 100 per cent. of the world's natural nitrates.
>
> "(b) They are confined to commodities where the consumption within the country of origin is in small ratio to the consumption in other countries. For instance, 5 per cent. of the world's coffee is consumed in Brazil and 7 per cent. of the world's rubber is consumed in the United Kingdom. Only a small per cent. of the nitrate or iodine production is consumed in Chile, and so on.
>
> "(c) Of rubber, nitrates, iodine, sisal, coffee, raw silk, and camphor the United States consumes nearly half, and in some cases almost 75 per cent. of the entire world's production.
>
> "(d) *These controls are largely exercised through governmental limitation of exports or of output imposed upon each producer or dealer.*
>
> "(e) They are all stated to be for the purpose of stabilizing the price for the mutual benefit of the producer and consumer.
>
> "(f) All of them have maintained or brought about prices highly profitable to their producers and some of them have from time to time advanced prices to exorbitant levels." (Italics ours.)

As an illustration of the extensive public discussion existing at the present time with respect to such government monopolies and the intricacies of the economic and political problem involved therein, the following quotation from an address and article by a prominent writer and publicist, Mr. Horace J. Bridges, may be referred to. In speaking on "The Debt Problem, and the European Feeling Toward America" (13 The Standard, for Dec., 1926, pp. 110, 117), he said:

> "* * * for our own part, we should wish to make cancellation conditional upon serious reduction of armaments, and the acceptance of binding commitments against war. We should also, I think, utilize it to secure *international* co-operation in *fields of policy* which, when pursued solely by individual nations in their own interest, cause much hard feeling and inconvenience. *I refer to the restriction of production and the withholding of commodities from the market in order to raise or maintain prices, practised of late years in regard to rubber, coffee, and other goods,* and now contemplated by ourselves in regard to cotton and wheat." (Italics ours.)

B. The remedy against injurious foreign government monopolies.

By virtue, therefore, of the very nature and character of such foreign government monopolies, it follows that if the United States feels aggrieved at any particular foreign government monopoly, the way to remedy any conceived injury is the way the United States would remedy any other alleged economic or political injury by such foreign government; and that way between co-sovereign national states is naturally, aside from the economic boycott and other remedies of private citizens, by *diplomacy* and the other usual methods adopted by a soverign national government for settling international disputes (see House Report, pp. 13, 17 and 22).

This is clearly indicated by the House Report where it points out the way in which a foreign government monopoly results in a dispute between two countries. The report states (House Report, p. 3):

> "This entry of foreign governments into the business and control of trading and the consequent rise in price at once compels consumers of such commodities to deal directly or indirectly with foreign governmental authorities and sooner or later *our citizens are forced to demand that their Government assist in these negotiations.* This projects the Government of both parties into business in large issues. *As a result the complaints of consumers* of such controlled commodities throughout the world regarding real or fancied wrongs in prices, supplies, and other trading conditions *become matters of governmental policy and concern and consequently stir international ill-will. In fact, through these processes trading is being* taken from the market places and *encumbered with the formalities and far reaching, serious consequences of international relations* with an inevitable harmful effect to the world." (Italics ours.)

It will, of course, be noted that such quotation points out that the dispute raises matters of "governmental *policy*" (italics ours). As a matter of illustration of the way in which foreign government monopolies raise international questions, two of the most important of such monopolies may be referred to, namely, the rubber monopoly of Great Britain and the potash monopoly of France and Germany.

With respect to the rubber monopoly of Great Britain, the House Report shows clearly the resort to *diplomatic* and other aid of the Executive Department of the United States Government to secure a remedy in the past. Such report states (House Report, p. 3):

> "An immediately effective remedy against price exactions has been demonstrated in the power of the American consumer to decrease demand as recently accomplished in the case of rubber. Emphatic complaints of American users of rubber goods, particularly tires, began to reach the Department of Commerce in the latter part of 1925. Since *both official and unofficial representations to the British Government had brought no relief, the Secretary of Commerce advised the complainants and the public generally to reduce their demand* for rubber by using substitutes and by extracting a greater measure of service from all rubber articles through using them properly and repairing them promptly." (Italics ours.)

Further data concerning such rubber monopoly and illustrating the proposition here made with respect thereto is contained in the following material:

The Bulletin of the Rubber Growers Association, Inc., Vol. 4, No. 11, November, 1922 (containing the Ceylon and Malaya ordinances restricting the export of rubber).

The Literary Digest for February 10, 1923 (containing an article on the British-American Rubber Conflict).

Foreign Affairs for June 15, 1924 (containing an article entitled "The Crude Rubber Supply: An International Problem," by Harry N. Whitford).

Harvard Business Review (Vol. II, No. 2, January, 1924 (containing an article on "The Evolution of the World Rubber Situation" by H. Stuart Hotchkiss).

Special Circular, No. 95, Department of Commerce, Bureau of Foreign and Domestic Commerce, Rubber Division, Washington (containing the Stevenson's Committee's Supplementary Report, quoting from the India-Rubber Journal of October 14, 1922).

The Report and the Supplementary Report of the Committee appointed by the Secretary of State for the Colonies to investigate and report upon the rubber situation in British Colonies and Protectories (the official reports published by his Majesty's Stationery Office).

The Commercial & Financial Chronicle, Vol. 113, Part I, July-September, 1921, pp. 692-803, (containing an original plan of the Rubber Growers Association to form a corporation to restrict the output and prices of rubber and the criticisms and advantages of such plan).

With respect to the potash monopoly of Germany and France, the situation has become the subject of a special report on "Potash—Significance of Foreign Control and Economic Need of Domestic Development" prepared and published in 1926 under the auspices of the Department of Commerce, Bureau of Foreign and Domestic Commerce, by H. M. Hoar of such Bureau, and C. C. Concannon, Chief of the Chemical Division. There is a very revealing section in this pamphlet on the resort to *diplomatic* measures as a means of dealing with the German potash monopoly in one of its earlier phases. Thus it is said, at pages 12-13 and 16:

> "In December, 1909, the syndicate carried out its threat of governmental interference by introducing a bill into the Bundesrath that would have invalidated all the American potash contracts, as well as constituted a practical repudiation of them.

* * * * * * *

"Nevertheless, negotiations continued * * * until the following December, when the United State was negotiating with various countries regarding the application of the maximum and minimum schedules of its new tariff law. Germany, of course, wanted the minimum or 'most-favored-nation' schedule, and, unquestionably, America desired reasonably priced potash. *Assurances were conveyed to our Government* that nothing would be done that could impair the validity of existing contracts and, on these assurances, Germany was given the benefit of the minimum schedule of the Payne-Aldrich Tariff Act.

"*Through diplomatic relations the much-advertised potash bill was withdrawn.* But on February 4, 1910, a new potash law was brought before the Reichstag by the federal council.

* * * * * * *

"Judging from the Reichstag discussions, it was now clear that Germany contemplated legislation along this line, but *notwithstanding the most emphatic protests of the United States Government*, American fertilizer interest and the Schmidtmanns, the Imperial Government finally, on May 25, 1910, enacted a potash law which was promulgated and went into effect three days later." (Italics ours.)

Since, therefore, the question raised by such a foreign government monopoly is a question of governmental *policy* and since the proper branch of the United States Government, under our constitutional system, to determine such governmental policy and to obtain any remedy that may be necessary under the circumstances is the Executive Department so far as diplomatic measures are necessary and the Legislative Department so far as legislative measures are necessary, it follows that the courts of the United States should not attempt to interfere and complicate the questions involved by any decree such as that asked for in the present case, which certainly cannot destroy the foreign government monopoly and can have no other effect than to possibly complicate an international situation. For the courts to attempt such a remedy would be nothing short of usurpation of executive and legislative functions, which is contrary to the theory and policy of this Court and our constitutional system.

In *Gordon* v. *United States*, 117 U. S. 697, Chief Justice TANEY, speaking for the Court, said at pages 699, 700:

> "It [the Supreme Court] is created by the Constitution, and represents one of the three great divisions of power in the government of the United States, to each of which the Constitution has assigned its appropriate duties and powers, and made each independent to the other in performing its appropriate functions. *The power conferred on this Court is exclusively judicial, and it cannot be required or authorized to exercise any other.*" (Italics ours.)

See also,

> *Muskrat* v. *United States*, 219 U. S. 346.

This general rule has been applied when this Court was called upon to pass on questions of a political character.

> *Pacific Telephone Co.* v. *Oregon*, 223 U. S. 118;
> *Kiernan* v. *Portland, Ore.*, 223 U. S. 151.

It needs no further citation of authority to show that the courts will not violate the fundamental principle of separation of powers implicit in our Constitution and will not attempt to destroy a monopoly created by a foreign government, which is not and cannot be a party before the Court, in which case, therefore, any such attempt will be merely a futile gesture. The House Report makes this perfectly plain when, in describing the problem here involved and the nature of the remedies which are applicable thereto, it leaves out of consideration completely any suggestion that the courts of this country can affect such foreign government monopolies. The Report states (House Report, p. 13):

> "The problem of remedies is indeed most difficult. *These governmental controls violate economic principles.* They stifle the growth of producing industries and stimulate the use of inferior substitutes among consumers. *Furthermore, they violate other than economic principles. Their disturbing influence upon international good will* cannot be overlooked and *is, in fact, one of the most important objections to them.* The friendly intercourse of nations would be better and more soundly based if these controls were wholly abolished. We commend the *efforts our Government has made* to induce an abolishment of those controls and urge renewed watchfulness and continued endeavor to accomplish that result.
>
> "If we consider the problem wholly from the point of view of domestic correctives, we have four alternative remedies:
>
> "The first is to secure immediate relief from high prices by conservation and substitution campaigns among our consumers, such as the very successful rubber conservation campaign for which the Department of Commerce is responsible.
>
> "The second is by *governmental* and private *action* to create an independent source of supply which cannot be brought under foreign control.
>
> "The third is for American citizens to refuse to furnish credit to these controls.
>
> "The fourth is direct retaliation in some form." (Italics ours.)

C. Conclusion.

That the problem here involved is an international economic and political one and that so far as the United States is concerned it depends for its solution on the adoption of a national *policy* by the United States, which means by those departments of the United States charged with the duty of determining such policy and not the judicial department, are propositions made conclusively apparent by the following opening remarks of the *Secretary of Commerce, Mr. Hoover,* in the hearings before the House Committee last year, already referred to. Mr. Hoover there said (Hearings, p. 2):

> "I am glad that Congress has seen fit to take this question up in a serious fashion. *It is one of very great importance to the country.* It is one in which the Department of Commerce has been very deeply interested. It is a subject very difficult to strip of its nonessentials, and it is, indeed, important that we should get to the fundamentals in a problem that is of vast importance, such as an investigation of this kind will enable us to do. *It is important that we handle the subject without arousing national prejudice.*
>
> "In undertaking an investigation into the growth and conduct of foreign controls of price and distribution of our import raw materials, *your committee has entered upon a problem of great gravity* not only to ourselves but *to the world as a whole. The issue* before you is much broader than the price of a particular commodity which may be at the moment vividly in the public mind; it *involves the whole policy that our country shall pursue toward a comparatively new and growing menace in international commerce and relations. This development* threatens not only the sane progress of the world but *contains in it great dangers to international good will.*

> "The world has often enough seen attempts to set up *private* monopolies, but *it is not until recent years that we have seen governments revive a long-forgotten relic* of medievalism and of war-time expediency *by deliberately erecting official controls of trade in raw materials of which their nationals produce a major portion of the world's supply,* and through these controls arbitrarily fixing prices to all of the hundreds of millions of other people in the world. *It is this intrusion of governments into trading operations on a vast scale that raises a host of new dangers—the inevitable aftermath of any such efforts by political agencies to interfere with the normal processes of supply and demand.* Our experience of the last 12 months with these controls has developed a series of fundamental questions which we can no longer ignore and upon which *we must determine a national policy.* These questions not only concern our own welfare, but also the welfare of consumers in 50 or more nations.
>
> "We can not solve these by acquiescence or acceptance and we will only compound and aggravate them by retaliatory action. On the other hand, if we are able to evolve the basis for a broad constructive solution *I believe we shall also make an important practical contribution to the promotion of stable international relationships.*" (Italics ours.)

In other words, we are faced here with an economic and political question of international proportions which, because there are national governments involved on opposite sides of the question, cannot be settled by the acts of the courts of one of such governments alone acting against private individuals merely and not against the foreign national government.

THIRD POINT.

If there be anything in the Government's contention that the pooling of the stocks of stored sisal held by the Eric Corporation with the stocks of stored sisal held by the Comision Reguladora constitutes a violation of the anti-trust laws, it is clear that the defendants Hanson & Orth are in no way involved in this alleged pooling of stocks.

We do not believe that the petition alleges or purports to allege any conspiracy other than the conspiracy to bring about a monopoly and restraint of trade by means of causing certain enactments, proclamations and decrees to be promulgated and made effective by the Government of the State of Yucatan and the Government of the Republic of Mexico.

As the Government's brief apparently urges the point (Government's Brief, p. 2, sub-paragraph "[b]") that the pooling of the stocks of sisal held by the Eric Corporation with those held by the Comision Reguladora is of itself an act in restraint of trade which in some unexplained way gives the courts jurisdiction to award injunctive relief, in spite of the fact that it appears on the face of the petition that the old stocks of stored sisal have long since been disposed of, it is well to bear in mind that all the acts of the other defendants with reference to the pooling of these stocks of stored sisal were consummated and completed long before Hanson & Orth or any of the members of that firm had any connection with the matters set forth in the petition.

The alleged pooling of these stocks is said to have taken place by contract between the Eric Corporation and the Comision Reguladora, dated January 23rd, 1920 (R., 9-10, Petition, pp. 18-19). It was not until May 1st, 1921, that Hanson & Orth or any of the members of that firm are said to have had any connection whatsoever with this matter (R., 12, Petition, pp. 22-3).

LAST POINT.

The order of the Court below granting the motion of Hanson & Orth, Charles D. Orth, Michael J. Smith and Charles D. Orth, Jr., to dismiss the petition, should be affirmed.

Dated, New York City, March 2, 1927.

Respectfully submitted,

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Harold R. Medina,
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SUPREME COURT OF THE UNITED STATES.

No. 200.—October Term, 1926.

The United States of America, Appellant,
vs.
Sisal Sales Corporation, Charles D. Orth, Alvin W. Krech, et al.

Appeal from the District Court of the United States for the Southern District of New York.

[May 16, 1927.]

Mr. Justice McReynolds delivered the opinion of the Court.

The United States seek an injunction to prevent appellees from taking further action in pursuance of a contract, combination or conspiracy said to be forbidden by the Sherman Anti-trust Act and the Wilson Tariff Act as amended, c. 647, 26 Stat. 209; c. 349, 28 Stat. 509, 570; c. 40, 37 Stat. 667. The trial court regarded *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, as controlling; held that no cause of action had been alleged; and dismissed the bill upon motion.

The bill is confused, difficult to follow, and an excellent example of bad pleading. An order should direct that it be recast and conformed to the established rules. Courts ought not to be burdened by rambling and obscure statements. Nevertheless, we think enough is alleged to indicate a meritorious cause and to require reversal of the judgment below.

Appellees are three banking corporations doing business at New York and New Orleans; two Delaware corporations—The Eric and the Sisal Sales—organized to deal in sisal; a Mexican corporation—Comision Exportadora de Yucatan—which buys sisal from the producers; certain officers and agents of the foregoing corporations; and members of Hanson and Orth, brokers.

Sisal is the fiber of the henequen plant, a native of Mexico, and from it is fabricated more than eighty per centum of the binder twine used for harvesting our grain crops. The annual requirements of the United States are from two hundred and fifty to three hundred million pounds. During one year a million bales —375 pounds each—were imported. Adequate quantities can be obtained only from Yucatan. The plant is extensively cultivated there and the supply has often exceeded market demands. Prices paid to producers have varied from less than four to seven or eight cents per pound.

Prior to 1919 appellee banks advanced large sums to parties endeavoring to monopolize importation and sale of sisal in the United States. The Mexican corporation, Comision Reguladora del Mercado de Henequen, was utilized as an important instrumentality for making necessary purchases and legislation favorable to it was secured. For a time the scheme succeeded; then came collapse. Through foreclosure of liens held to secure their loans (several million dollars) appellee banks acquired four hundred thousand bales of fiber stored in this country. About that time, through change of laws, the Yucatan markets were again opened; competition became active and prices declined.

Thereupon, appellee banks, acting jointly and within the United States, entered into and undertook to make effective another and somewhat different combination or scheme to control the sisal market, with the ultimate purpose of selling their holdings, recouping losses and securing large gains. Later, the other defendants became parties thereto.

As the direct outcome of this unlawful combination, conspiracy and accompanying contracts, it is alleged—

Appellees have secured a monopoly of interstate and foreign commerce in sisal. The Comision Exportadora de Yucatan has become sole purchaser of sisal from producers and the Sisal Sales Corporation sole importer into the United States. There is no longer any competition in the trade; excessive prices are arbitrarily fixed. The sisal acquired by the banks during 1919 has been sold; undue profits and commissions have been and are demanded; the conspirators have realized great sums at the expense of our manufacturers and farmers.

All steps necessary to bring about the above-stated results have been deliberately taken by appellees. Some of them are stated below.

The Eric Corporation, organized in August, 1919, and owned and financed by the banks, took over the large stocks of sisal acquired by them through foreclosure, also two hundred and fifty thousand bales accumulated in Yucatan. Laws favorable to it were solicited and secured from the governments of Mexico and Yucatan. Under them, and by the use of large sums supplied by the banks, that corporation and its agents soon became everywhere the dominant factors in the sisal trade. Prior to January, 1921, the Mexican corporation, Comision Reguladora del Mercado de Henequen, was the agency for buying and selling sisal in that country; but about that time its business collapsed. Thereupon, the Comision Monetaria was organized under the same laws, furnished with large sums of money and utilized for such purposes. The governments of both Mexico and Yucatan were persuaded to pass discriminatory legislation and all other buyers were forced out of the markets. But because of the great supply of fiber this plan also proved unsuccessful and The Eric Corporation was obliged to increase its large holdings.

Later, by procurement of the banks, the Sisal Sales Company was organized to deal in sisal and Hanson and Orth became its managers. It took title to the sisal held by The Eric Corporation. The old Comision Reguladora del Mercado de Henequen was revived as the Comision Eportadora de Yucatan and again became the active agent for buying and selling in Mexico. Laws were solicited and passed which gave it advantages over all others. Under these, and by the use of funds supplied by the banks, it soon became the sole buyer of sisal from the producers. It also acquired the fiber held by the Sisal Sales Corporation on storage in the United States. Thereupon, the Sisal Sales Corporation, through contracts, became the exclusive selling agent of the Comision Exportadora de Yucatan in all markets of the world and agreed to furnish the funds necessary for their joint operations. Appellees thus, and by constant manipulation of the markets, acquired complete dominion over them, destroyed all competition, obtained power to advance and arbitrarily to fix excessive prices, and have made unreasonable exactions.

Accepting as true the allegations of the bill—roughly summarized above—it is plain enough that appellees are parties to a successful plan to destroy competition and to control and monopolize the purchase, importation and sale of sisal. The Sherman Act inhibits contracts, combinations and conspiracies to destroy competition in interstate and foreign trade and commerce as well as attempts to monopolize such trade. Sections 73 and 74 of the Wilson Tariff Act, as amended,* declare unlawful every combination, conspiracy, trust, agreement or contract intended to operate in restraint of trade in, or free competition in respect of, or intended to increase the market price of any article when one of the parties is engaged in importing the same, and give the courts power to prevent and restrain those who violate the Act.

The circumstances of the present controversy are radically different from those presented in *American Banana Co.* v. *United Fruit Co., supra*, and the doctrine there approved is not controlling here. The Banana Company sued for treble damages under the Sherman Act, basing its claim upon acts done outside the United

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*Wilson Tariff Act, Aug. 27, 1894, as amended by Act of Feb. 12, 1913.

SEC. 73. That every combination, conspiracy, trust, agreement, or contract is hereby declared to be contrary to public policy, illegal, and void when the same is made by or between two or more persons or corporations either of whom, as agent or principal, is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who is or shall hereafter be engaged in the importation of goods or any commodity from any foreign country in violation of this section of this Act, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and on conviction thereof in any court of the United States such person shall be fined in a sum not less than one hundred dollars and not exceeding five thousand dollars, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months.

SEC. 74. That the several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of section seventy-three of this Act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petitions setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

States and not unlawful by the law of the place. "The substance of the complaint is that, the plantation being within the *de facto* jurisdiction of Costa Rica, that state took and keeps possession of it by virtue of its sovereign power. But a seizure by a state is not a thing that can be complained of elsewhere in the courts." "A conspiracy in this country to do acts in another jurisdiction does not draw to itself those acts and make them unlawful, if they are permitted by the local law."

Here we have a contract, combination and conspiracy entered into by parties within the United States and made effective by acts done therein. The fundamental object was control of both importation and sale of sisal and complete monopoly of both internal and external trade and commerce therein. The United States complain of a violation of their laws within their own territory by parties subject to their jurisdiction, not merely of something done by another government at the instigation of private parties. True, the conspirators were aided by discriminating legislation, but by their own deliberate acts, here and elsewhere, they brought about forbidden results within the United States. They are within the jurisdiction of our courts and may be punished for offenses against our laws.

Moreover, appellees are engaged in importing articles from a foreign country and have become parties to a contract, combination and conspiracy intended to restrain trade in those articles and to increase the market price within the United States. Such an arrangement is plainly denounced by Section 73 of the Wilson Tariff Act, as amended.

The decree of the court below must be

Reversed.

Mr. Justice STONE took no part in the consideration or decision of this cause.

A true copy.

Test:

Clerk, Supreme Court, U. S.